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**ORIGINAL**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**LEWIS JOHNSON**  
Plaintiff,

v.

**ANTHONY PRINCIPI,**  
Secretary Of Veterans Affairs, et. al.,  
Defendants

CIVIL ACTION NO. 1:CV-00-1873

JUDGE McCLURE

JURY TRIAL DEMANDED

**FILED  
HARRISBURG,**

**JUL 29 2002**

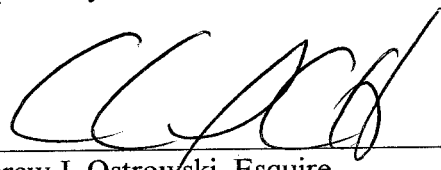
**MARY E. D'ANDREA**  
Per MD

**EXHIBITS OF PLAINTIFF IN OPPOSITION TO DEFENDANTS'**  
**MOTION FOR SUMMARY JUDGMENT**

- A. Deposition of Raymer Kent
- B. Deposition of Rodney Kiscadden
- C. Deposition of Joseph Stuckey
- D. Deposition of William Dumas (to be supplied)
- E. Deposition Exhibits
- F. Appendix of Miscellaneous Exhibits

Respectfully submitted,

By

  
Andrew J. Ostrowski, Esquire  
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Attorney for Plaintiff

Dated: July 29, 2002

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT

Lewis Johnson, :1: CV-01-1873

Plaintiff :

vs. :

Hershel Gober Et.al, :

Defendant :

DATE: April 8, 2002

PROCEEDINGS: Video Deposition of  
Raymer Kent

APPEARANCES:

For the Plaintiff: Andrew Ostrowski  
4311 North 6<sup>th</sup> St  
Harrisburg, PA 17110

For the Defendant: MERSHIMER Mershimer  
228 Walnut Street  
Harrisburg, PA 17108

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Kent, K-E-N-T.

LYDE:: Keep your hand up for  
me please. Do you swear to tell the  
whole truth and nothing but the truth  
so help you God?

KENT: I do.

LYDE:: Thank you. Could I  
have a voice check around the room  
please?

MERSHIMER: Kate Mershimer,  
representing the defendants.

KENT: Ray Kent.

MCLUCAS: My name is Gail  
McLucas from the court reporting firm  
Filius and McLucas.

OSTROWSKI: I'm Andy Ostrowski,  
counsel for Plaintiff.

JOHNSON: Lewis Johnson,  
Complainant.

LYED: Thank you. Usual  
stipulations?

MERSHIMER: Yes, we reserve all  
objections other than the form of the  
question. And the witness would like

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LYDE: Good morning, ladies and  
gentlemen, please be advised that video  
and audio is in operation. My name is  
Crystal M. LYDE. My address is 4310  
Hillsdale Road, Harrisburg, Pennsylvania,  
17112. I've been contracted by PR Video  
Incorporated to be the Operator for this  
deposition. The case is in the United  
States District Court for the Middle  
District of Pennsylvania. The caption is  
Lewis Johnson versus Hershel Gober Et.al.  
The Docket Number is 1:CV-01-1873. The  
date is April 8, 2002. The deposition is  
being held in the law office of Andrew J.  
Ostrowski, 4311 North 6<sup>th</sup> Street,  
Harrisburg, Pennsylvania, 17110. The  
video deposition is being taken on behalf  
of Plaintiff Lewis Johnson. The  
witness's name is Raymer Kent. The time  
now is 10:09 a.m. Raise your right hand  
please. State your name for the record  
and spell it.

KENT: My name is Raymer Kent.  
It's R-A-Y-M-E-R, middle initial A

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to read and sign the deposition.

LYDE: Okay.

OSTROWSKI: Okay, Mr. Kent, my  
name is Andy Ostrowski. We met just a  
second before we got on the record  
today. You understand you are hear  
today to give a deposition in  
connection with a lawsuit that Lewis  
Johnson has brought against the  
Veteran's Administration and persons  
associated with the Veteran's  
Administration.

KENT: Yes.

OSTROWSKI: Have you given a  
deposition before?

KENT: Not in federal court,  
no.

OSTROWSKI: Okay. Well, as you  
understand, we are in federal court.  
We are in the litigation process and  
during that process the rules authorize  
those who are entitled to sit down and  
take deposition from persons who we  
believe have knowledge or information

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1 relevant to our lawsuit. And you are  
 2 one person who's name surfaced in that  
 3 regard and for that reason we brought  
 4 you in here. I made arrangements with  
 5 Ms. Mershimer to have you in here for a  
 6 deposition today. It's a question and  
 7 answer session, relatively informal,  
 8 but all my, or most of my remarks to  
 9 you will be in the form of a question  
 10 to which I expect, you know, your  
 11 verbal response. So, it's important  
 12 that you hear and understand the  
 13 questions and that when you answer, you  
 14 are responding to the question as you  
 15 understood it. So if you don't, if a  
 16 question I ask is not clear, and  
 17 there's anything I can do to help you  
 18 to understand it better, I'll restate  
 19 it or re-ask it or clarify, just feel  
 20 free to stop me and ask me to do so and  
 21 I will be happy to, okay?

22 KENT: Okay.

23 Q: How are you currently  
 24 employed?

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1 Lebanon.

2 A: Because I was a veteran.

3 Q: Okay. And could you  
 4 describe for me how the Human  
 5 Resources, is it the Human Resources  
 6 Office? Is that...

7 A: Uh-huh.

8 Q: Okay, how is that office  
 9 set up in terms of it's administrative  
 10 structure?

11 A: Well, there are at the  
 12 moment and since 1997, since I'm in  
 13 charge of the department, there are,  
 14 well, I'm the Manager of the  
 15 department, the only Supervisor. There  
 16 are at least three Personnel Management  
 17 Specialists of equal grade that service  
 18 a block of product line units that are  
 19 divided up fairly equally. There is a  
 20 Specialist in charge of Payroll, a  
 21 Specialist in charge of Nurse  
 22 Recruitment, a Specialist in charge of  
 23 Compensation and Benefits, and then  
 24 there are one, two, three, four, five

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1 A: I'm employed by the  
 2 Veteran's Administration in the  
 3 Department of Veteran's Affairs as a  
 4 Human Resources Manager at the VA  
 5 Medical Center in Lebanon,  
 6 Pennsylvania.

7 Q: Okay, how long have you  
 8 been Human Resources Manager for the VA  
 9 in Lebanon.

10 A: As a Human Resources  
 11 Manager, since 1997.

12 Q: Okay. Prior to that, how  
 13 were you employed?

14 A: I was employed as the  
 15 Assistant Personnel Officer at the VA  
 16 Medical Center in Lebanon from 1982 to  
 17 1997.

18 Q: Okay. And do you have a  
 19 background training or education in  
 20 Personnel related matters?

21 A: Actually, my Bachelors and  
 22 Masters are in International Relations.

23 Q: Okay. How did you come to  
 24 the Veteran's Administration in

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1 clerical staff.

2 Q: Okay, you said that the  
 3 three Personnel Management Specialists  
 4 have areas...

5 A: Areas by the division of  
 6 units of, to make a fairly equal  
 7 workload.

8 Q: Okay, and how, what are the  
 9 different units of work that you have  
 10 separated out?

11 A: You mean units? We've, by  
 12 units of work I mean organizational  
 13 units, like full, basically full  
 14 service to the organizational units.  
 15 Like one has acute care, one will have  
 16 an extended care, one will do the  
 17 operations section. Then we'll piece  
 18 up little pieces like the cemetery will  
 19 be assigned to one to balance the  
 20 workload.

21 Q: Okay. But then they all  
 22 have the broad range of functions with  
 23 respect to each unit?

24 A: Except for Payroll and



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1 Workman's Compensation. Basically are  
2 functionally aligned.

3 Q: And who is responsible, you  
4 say you have a Specialist assigned to  
5 do Workman's Compensation?

6 A: Specifically, yes.

7 Q: Who currently holds that  
8 position?

9 A: That's Joseph Stuckey.

10 Q: Okay, how long has Mr.  
11 Stuckey been in that position?

12 A: I think five years.

13 Q: Okay. And does he have  
14 staff in that position?

15 A: Assistant clerical support.

16 Q: Just office clerical  
17 support?

18 A: That's it, that's all.

19 Q: Okay. Does your office  
20 have any role or responsibility in  
21 handling administrative complaints of  
22 discrimination, EEO charges?

23 A: We support. There is an  
24 EEO officer for the Medical Center.

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1 information, how to follow the process,  
2 but there are EEO Counselors that deal  
3 with the informal level of the  
4 complaint and then if the complaint is  
5 not resolved at the informal level,  
6 there's a formal system within. And a  
7 formal investigation and then a hearing  
8 if that, if the investigation doesn't  
9 lead to a resolution.

10 Q: And how much of those  
11 responsibilities derive from Human  
12 Resources Office?

13 A: It used to be, prior to  
14 1996, all from Human Resources. So  
15 that was one of my assignments in Human  
16 Resources as Assistant Personnel  
17 Officer. But '96 the VA changed their  
18 system. At that time the Medical  
19 Center Director was the EEO Officer and  
20 the locality they assigned to them was  
21 more a conflict of interest. And they  
22 separated that out and made the EEO  
23 Officer a separate entity for a  
24 regional position, and then broke out

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1 It's a collateral duty assignment  
2 because we don't have that much  
3 workload.

4 Q: Who is the EEO Officer?

5 A: At the moment it's Wayne  
6 Reardon. Prior to Wayne Reardon, I  
7 think it was Steven Galarizo. And then  
8 prior to him, there was Samuel Alito.

9 Q: Alito, A-L-I-T-O?

10 A: A-L-I-T-T-O.

11 Q: And, who was in that  
12 position in '98 and '99?

13 A: I think it was Samuel  
14 Alitto. But I'm not, it could've been  
15 either Sam Alitto or Steven Galarizo.  
16 That was about the change-over period.

17 Q: How are EEO complaints, EEO  
18 charges handled within the Veteran's  
19 Administration?

20 A: There are EEO Counselors  
21 that are first point of contact. The  
22 EEO Officer for the Medical Center is  
23 more like a coordinator position to  
24 make sure that the people get the

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1 the complaints process to make it a  
2 little bit more clear and unbiased.

3 Q: So after that  
4 reorganization, what did you say was  
5 '97...

6 A: '96

7 Q: After that point, the Human  
8 Resources Office had no official role?

9 A: That is not correct. We  
10 supported with information, Ray made  
11 arrangements to make sure people were  
12 cooperating with the process, but not  
13 direct.

14 Q: As far as processing an  
15 investigation you had no role in that?

16 A: No. We would just make  
17 sure, if I'd say if someone, an  
18 investigator wanted to come in, we  
19 would track down witnesses or something  
20 like that for them. Assist in the  
21 paperwork process, but no direct  
22 linkage.

23 Q: Would you say though that,  
24 not withstanding the change that the

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1 Human Resources Office knows pretty  
2 much when there is a complaint of  
3 discrimination that's pending? When an  
4 employee at the Veteran's  
5 Administration, Lebanon, has a  
6 complaint of discrimination?

7 A: If, if, information is  
8 requested in the process, we know.  
9 However, for instance, if an employee  
10 calls directly to an EEO Counselor, and  
11 their out of Lyons, NJ, at the moment,  
12 we don't necessarily know unless the  
13 EEO Counselor calls us and asks us for  
14 any information.

15 Q: Well, what complaints of  
16 discrimination of Lewis Johnson's do  
17 you have personal knowledge of?

18 A: Personal knowledge of a  
19 complaint concerning non-selection for  
20 promote, for reassignment, and then  
21 there was a complaint concerning  
22 alleged discrimination in the workplace  
23 towards the end of his employment.

24 Q: When did you first become

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1 about the promotion.

2 Q: From whom did you receive  
3 request for information?

4 A: I think it was from either,  
5 it could've been either the EEO  
6 Counselor here or the EEO Coordinator  
7 at the Medical Center. Either one  
8 could've asked for the copies.

9 Q: You were aware that in  
10 connection, you became aware of that in  
11 connection with his EEO complaints, is  
12 that correct?

13 A: Yes.

14 Q: And what kind of  
15 information was requested from you?

16 A: Information, copies of all  
17 the documents about the promotion slash  
18 reassignment.

19 Q: Did you have any personal  
20 involvement in any of the matters  
21 relating to the reassignment issue?

22 A: No. Other than my signing  
23 the announcements, etc.

24 Q: And you do that pretty much

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1 aware of those matters?

2 A: When I was contacted by an  
3 investigator who asked for information.

4 Q: When was, around the time  
5 of the events complained to him?

6 A: It would have been after,  
7 but shortly after, it's the system's  
8 design to keep track of it quickly.

9 Q: While Mr. Johnson was still  
10 employed?

11 A: Yes.

12 Q: With respect to the issue  
13 of the non-selection, that was around  
14 closer time to the non-selection issue?

15 A: They're all pretty much  
16 together. There was not a lot of time  
17 between these issues.

18 Q: Now how did you become  
19 aware of the issue regarding, not the  
20 EEO issue, but more generally, the  
21 issue concerning Mr. Johnson's not in  
22 selection for the Housekeeping  
23 position?

24 A: Request for information

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1 as a matter of course?

2 A: Every announcement unless  
3 I'm not on duty.

4 Q: Now, subsequent, actually  
5 if you're, I'll just show you this to  
6 refresh your recollection if you don't  
7 have one. This is the position vacancy  
8 announcement for the position of  
9 Housekeeping Aide. You understand that  
10 position to be the subject of Mr.  
11 Johnson's concerns regarding non-  
12 selection or non-reassignment for that  
13 position?

14 A: I can't verify that 100%.  
15 The time frame is correct but these  
16 things go up every time there is a  
17 Housekeeping vacancy.

18 Q: But you understood that it  
19 was a Housekeeping position and it was  
20 around the middle of 1998?

21 A: Yes.

22 Q: Mr. Johnson has indicated,  
23 and there's some discussion of it  
24 during Peg Winter's deposition last

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1 week that there was a meeting in  
2 October, 1998 that you participated in,  
3 I believe, by conference call, by  
4 telephone? Do you recall there being  
5 such a meeting?

6 A: I, I think you are  
7 referring to a phone call that I had  
8 from Peg Winters while she was having a  
9 meeting.

10 Q: Right.

11 A: It was not a scheduled  
12 meeting with myself.

13 Q: But you participated then  
14 in the conference call during their  
15 meeting?

16 A: No, I participated in the  
17 telephone call to their meeting.

18 Q: Your telephone call was  
19 just to Peg Winters? Is that what you  
20 are saying?

21 A: It may have been on speaker  
22 phone.

23 Q: What, what can you tell me  
24 about that telephone call?

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1 determined that it was for the purposes  
2 of the RIF only.

3 OSTROWSKI: I'm going to show  
4 you, this was a page of Exhibit 9, that  
5 document we used during depositions  
6 last week. It's a Memorandum of  
7 Understanding between the VMAC Lebanon  
8 and A of GE Local 1966. Let me know  
9 when you are done viewing it.

10 KENT: Yes, this was the  
11 Memorandum of Understanding that I  
12 think was under discussion at the time,  
13 which was designed to assist in  
14 reassignment of employees who were  
15 dislocated during the time of the RIF.  
16 We were rifting 117 employees at the  
17 Medical Center and trying to find them  
18 permanent positions within the Medical  
19 Center rather than RIF. So that's what  
20 we had used at that time. We had not  
21 negotiated a local supplemental  
22 contract and had not had that  
23 definition in writing anywhere else.

24 Q: Now, what, do you have any

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1 A: My recollection is the  
2 telephone call was concerning whether  
3 or not a Memorandum of Understanding  
4 that was written during our RIF in  
5 1997, had any bearing on the current  
6 selection process.

7 Q: And who raised that concern  
8 with you?

9 A: Mrs. Winters.

10 Q: And why, did you have an  
11 understanding as to why that was an  
12 issue at that time?

13 A: Yes, I think there was some  
14 confusion as to whether or not  
15 seniority was the determining factor  
16 for reassignments or relocation, in  
17 general, rather in specific referring  
18 to the RIF.

19 Q: And was there any, any  
20 further discussion or resolution of  
21 that question?

22 A: Well, it was a verification  
23 that both herself and I who negotiated  
24 the Memorandum of Understanding

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1 understanding of what role, in general,  
2 not in connection with the RIF, but in  
3 general, seniority plays in issues of  
4 reassignment or promotion?

5 A: It's defined in the  
6 contract that seniority will be a  
7 factor, among other factors when you  
8 are looking at change in a work  
9 location or reassignment of candidates.  
10 The difference, change in work location  
11 being the difference of movement within  
12 the same position description,  
13 generally within the same  
14 organizational unit, like the Janitor  
15 on Ward 19-1 to Janitor on Ward 19-2.  
16 If they have the same position  
17 description. And reassignment meaning  
18 from the same grade and titled  
19 position, in other words, Housekeeping  
20 Aide WG-2, from this place in the  
21 organization to Housekeeping WG-2 of  
22 that place, could be a different  
23 position description, could be a  
24 different organizational alignment.

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1 Q: Now there was some  
2 indication, at least from Mr. Johnson,  
3 that during the meeting with Peg  
4 Winter's, in your telephone, in which  
5 you participated by telephone, that  
6 there was some discussion of there  
7 having been a change in the selection  
8 policy for the Housekeeping Aide  
9 position. Do you have any recollection  
10 of that?

11 A: The only change that  
12 could've affected the selection would  
13 have been the reorganization of  
14 Housekeeping in 1997. Prior to 1997 it  
15 was a homogeneous unit, all  
16 Housekeeping Aides were employed by  
17 Environmental Management Service. And  
18 so that WG-2 Housekeeping Aide's pretty  
19 much could move from point A to point B  
20 within the Medical Center as a change  
21 in work location. Subsequent to the  
22 1997 reorganization, Housekeeping Aides  
23 were assigned directly to a product  
24 line, as part of the product line

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1 somebody on 19-2. A guy there left.  
2 Anybody want to go over to 19-2."  
3 Change in work location. Prior to '97  
4 reorganization, subsequent to the  
5 reorganization, since you had  
6 Housekeeping in different  
7 organizational units, the announcement  
8 of opportunities was centralized  
9 through HR. HR anytime, any  
10 Housekeeping Aide position became  
11 vacant, HR would put up a notice like  
12 you saw there that I signed that said,  
13 "If you are interested in the position,  
14 now's the time to let us know."

15 Q: Okay, and at that point how  
16 is the process conducted?

17 A: It is a conglomerate  
18 process. That notice is a merit  
19 promotion notice, it's a reassignment  
20 notice, it's a change of lower grade  
21 opportunity, this vacancy, this  
22 position is open. How you get there is  
23 a variety of different ways. So, under  
24 the terms of the contract, we could

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1 organization to keep all the staff  
2 working as a team on a unit, reporting  
3 to one supervisor rather than  
4 supervisors in different organizational  
5 segments. So therefore, if a person  
6 from Extended Care wanted to put in for  
7 a job in Acute Care, they'd be crossing  
8 organizational lines. It would no  
9 longer be a change of work location, it  
10 would be a reassignment or promotion,  
11 depending on the grade of position.

12 Q: Is that the sense in which  
13 it could have affected, that change  
14 could have affected the selection  
15 process...

16 A: It could also, the other  
17 difference it would have made was how  
18 he would have found, if you were a  
19 Housekeeping Aide, how you would have  
20 found out about an opportunity to work  
21 in a different area. Prior to 1997, it  
22 was one homogenous unit. The  
23 Housekeeping Aide Supervisors would  
24 just hand out a notice, "We need

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1 either be taking a, let's say food  
2 service workers, who are WG-1's, and  
3 want to be promoted to a WG-2, and  
4 putting them through the promotion  
5 process to make a referral. We could  
6 take a, cooks, who say "I don't wanna  
7 cook anymore. I'd rather be a  
8 Housekeeping Aide." It's a change in  
9 lower grade. Separate referral.  
10 Thirdly, most likely, would be  
11 reassignment. Saying a Housekeeping  
12 Aide from Acute Care or a Housekeeping  
13 Aide from Operations would like to work  
14 in Extended Care, so they would also  
15 give us their name. And then we would  
16 do three separate processes to refer  
17 candidates.

18 Q: And the process, as it  
19 applies to a Housekeeping Aide applying  
20 for a Housekeeping Aide position, is  
21 that reassignment process?

22 A: Unless their different,  
23 there are different grades Housekeeping  
24 Aides. If it's the same grade, it's a

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1 reassignment then. At that point. If  
2 a, candidates from Operations and  
3 candidates from Acute Care are  
4 interested in the Extended Care, they  
5 would be, and they're all WG-2  
6 Housekeeping Aides, they'd be put on  
7 one list and referred over.

8 Q: And then that's a  
9 reassignment process?

10 A: That's a reassignment list.  
11 If there was somebody who's a cook  
12 who's WG-4, they would be placed on a  
13 change of lower grade list and referred  
14 over, and then the merit promotion  
15 would rate and rank candidates and  
16 refer the highly qualified lower grade  
17 employees on a separate list.

18 Q: And then at that point when  
19 it's, if it's a WG-2 Housekeeping Aide  
20 applying for a WG-2 Housekeeping Aide  
21 position, is it processed, after  
22 they're referred over conducted as a  
23 reassignment process?

24 A: Yes.

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1 who has a tendency not to understand  
2 and I think we were going around in a  
3 circuitous path trying to verify that  
4 when the Union President and I sat  
5 down, the meeting was for the RIF.  
6 That was the concern, that was the  
7 issue at the time. It wasn't a  
8 unending agreement that we had decide.

9 Q: So you're frustration, is  
10 that a fair way to characterize it?

11 A: That stemmed from the fact  
12 that the two of us who sat at the table  
13 and negotiated were explaining it to  
14 the District Representative who wasn't  
15 there and wouldn't accept the answer  
16 that the two of us who sat there and  
17 negotiated and were getting there.

18 Q: What did you understand the  
19 significance of this MOU to be in the  
20 context of Mr. Johnson's complaint?

21 A: The significance, though he  
22 was bringing to it was that this was  
23 the only means of determining  
24 reassignments.

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1 Q: And whatever factors apply  
2 to a reassignment process then would  
3 apply to the selection for that  
4 position?

5 A: Yes.

6 Q: Including whatever,  
7 whatever weight is given to seniority  
8 in that process, correct?

9 A: Yes, under the terms of, I  
10 think it's Article 12 or 13 of the  
11 contract, that defines reassignment,  
12 which says that it's a factor but other  
13 good faith factors will be considered  
14 in making a decision.

15 Q: Now, Mr. Johnson had  
16 indicated that during your  
17 participation in that meeting, the  
18 October 1998 meeting, at some point you  
19 had, you had become angry about  
20 something. Do you recall that?

21 A: Well, if I remember  
22 correctly, there was a District  
23 Representative from AFG in the office  
24 at the time. Her name was Joan Welsh,

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1 Q: And your response to that  
2 would be that though this is not the  
3 only means, whatever the contract says  
4 about reassignments is what applies...

5 A: Takes precedence. You can,  
6 you cannot supercede the National  
7 Master Agreement by any local  
8 agreement. This was specifically  
9 designed for people who are displaced  
10 and in limbo, as it were, waiting for  
11 the RIF to happen, that we were trying  
12 to transition into permanent positions  
13 other ways, other areas in the medical  
14 center that weren't being RIF'ed so  
15 that they wouldn't have to be sent out  
16 the door. Specifically for that  
17 purpose.

18 Q: So if I could just try to  
19 characterize what your response to the  
20 concern with the MOU, was that it's not  
21 this document that applies to this  
22 reassignment, it's whatever the  
23 National Agreement says about  
24 reassignment that applies to this

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1 reassignment?

2 A: Exactly.

3 Q: Could you describe for me  
4 the overall process of a processing a  
5 Workmans' Compensation claim? I know  
6 that's kind of general and vague.

7 A: Well, normally, the  
8 supervisor was immediately informed of  
9 an accident or a need to file a claim,  
10 an illness or an accident. The  
11 supervisor had generally...

12 Q: As you go through it I'm  
13 going to stop and ask you questions as  
14 we go. You say normally the supervisor  
15 is informed. Now how, how is that  
16 determined?

17 A: Well, it's in our  
18 administrative center policy that the  
19 supervisor is supposed to be the first  
20 point of contact, almost, it's life  
21 saving emergent injury and then you're  
22 going directly to healthcare. The  
23 supervisor is supposed to get involved,  
24 escort the employee to our healthcare

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1 a long-term exposure to it. Or for  
2 instance, Carpal Tunnel. It's a real  
3 debatable claim but it's one that you  
4 are constantly doing a certain work or  
5 motion and eventually it causes a  
6 problem, so that's occupational illness  
7 or disease.

8 Q: Now, is there any  
9 difference in the further processing of  
10 a claim?

11 A: Absolutely.

12 Q: Okay, well what?

13 A: Traumatic injuries have  
14 special provisions for them. They have  
15 a 45 day continuation of pain clause in  
16 order to make sure that employees  
17 immediately put out of work by  
18 traumatic incident has pay and doesn't  
19 have a break in pay until compensation  
20 kicks in and processes the claim. This  
21 is 45 day COP, Continuation of Pay.  
22 That does not apply to occupational  
23 illnesses or diseases. But, otherwise,  
24 once compensation kicks in, either at

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1 unit for employees, for treatment, if  
2 it's a traumatic injury, assist in the  
3 paperwork.

4 Q: What do you mean traumatic  
5 injury?

6 A: Two basic case lines in  
7 compensation claims. The one is a one-  
8 time incident, you run your hand  
9 through the meat slicer. Trauma  
10 injury. Trip over the two by four that  
11 was misplaced in the hallway and fall  
12 down. Traumatic injury. It's  
13 immediate, it's time sensitive, it  
14 results in an immediate impact on an  
15 employee. The other one is  
16 occupational illnesses or diseases.  
17 And that is long, in other words,  
18 instead of it being a one time issue,  
19 it's spread over a period of time. It  
20 could be, for instance, exposure, you  
21 routinely work on the TB unit and so  
22 therefore you are constantly exposed to  
23 Tuberculosis and eventually you go  
24 positive and contract it. That kind of

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1 day 1 for occupational illnesses or  
2 diseases or day 46 after 45 day  
3 continuation of pay, they're basically  
4 the same. You are off work because of  
5 the incident and the incident's  
6 approved that it's related to  
7 employment, you either get 66 2/3rds of  
8 your salary if you are single, or 75%  
9 if you have dependents. Tax free  
10 compensation depends. Both claims are  
11 handled through the Office of Workmans'  
12 Compensation U.S. Department of Labor.

13 Q: What about a claim of  
14 emotional trauma sustained as a course  
15 of, in this case harassment. Would  
16 that be properly processed as...

17 A: If it was, see, if it's  
18 harassment over a period of time, it's  
19 over a period of time again. Then it  
20 becomes occupational illness or  
21 disease. If it's, let say, let's use  
22 sexual harassment because it could make  
23 it more immediate trauma. A guy hits  
24 on a girl. She automatically



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1 emotionally responds. One time, one  
2 incident, one cause and effect, that  
3 would be traumatic injury cause it's  
4 related to one incident. But if it's  
5 just let's say, hostile work  
6 environment, there's posting pictures  
7 of the, girly pictures on the wall and  
8 saying nasty things about girls and it  
9 just builds up until it hits a boiling  
10 point and they can't take it anymore,  
11 that would be occupational illness and  
12 disease.

13 Q: So the same, so an  
14 emotional injury, as in exposure to  
15 conditions of employment, could be  
16 characterized, fairly characterized as  
17 either traumatic or the occupational  
18 disease?

19 A: For instance, 9/11, they  
20 probably suffered from traumatic injury  
21 and had emotional response. One issue,  
22 one incident, one response.

23 Q: Have you processed any  
24 claims?

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1 forms, supervisor does another part, HR  
2 assists in the process, gets forms to  
3 the doctors so the doctors can complete  
4 their forms, gathers all the  
5 information together and submits it to  
6 the Department of Labor.

7 Q: And is there a prescribed  
8 period of time over which these initial  
9 activities are to be handled?

10 A: As quickly as possible.  
11 There's no mandated time frame that you  
12 must have it done on a certain time  
13 frame. More recently the VA has tried  
14 to improve the process by putting some  
15 milestones in the process to get  
16 everybody goals to improve, but they  
17 weren't in effect until a year or two  
18 ago.

19 Q: What are those milestones?

20 A: Think at the moment they're  
21 using fourteen days.

22 Q: In order to get one  
23 accomplished?

24 A: Get a claim to the OWCP.

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1 A: I wouldn't, it wouldn't go  
2 through me anyway.

3 Q: Okay, after, after the  
4 supervisor's role, you said the  
5 supervisor is kind of the immediate  
6 contact in...

7 A: To gather, to assist in  
8 obtaining healthcare, to assist in the  
9 completion of the basic claims forms,  
10 to gather facts and information if  
11 necessary. We also assist in that  
12 process, that's why we have a  
13 designated Human Resource Specialist  
14 for Compensation. Carries a pager.  
15 Somebody shows up at an employee urgent  
16 care unit because of an injury, they  
17 generally page him as well to make sure  
18 that the process is handled.

19 Q: And then once the immediacy  
20 concerns are addressed, what then is  
21 the process from there, as far as who's  
22 responsible for submitting forms and  
23 gathering information?

24 A: Claims does the part of the

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1 Q: And what role does the  
2 Administrative Agency have in  
3 determining, making a determination as  
4 to whether a situation is compensable?

5 A: We don't make that ruling.  
6 We supply the information. They have  
7 the - in which the ruling's based.

8 Q: Your agency then is just  
9 simply a conduit for information to  
10 OWCP?

11 A: We make sure the  
12 information gets gathered, make sure  
13 that it gets put together, we can  
14 provide recommendations, but that's as  
15 far as it goes.

16 Q: What, when you say you can  
17 provide recommendations, is that  
18 something that under the applicable  
19 rules or regulations is something  
20 that's a prescribed function?

21 A: Oh, absolutely, you can  
22 enter in your objections to vote a case  
23 being handled. For instance, for  
24 instance, if you faint on duty, and the

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1 fainting wasn't caused by the work,  
2 that technically, by the regulations is  
3 not compensable. It happens more often  
4 than you'd think. People get sick and  
5 they faint or their blood pressure goes  
6 low and they get up too fast and they  
7 just fall down. If they just fall down  
8 and hit the floor cause they fainted  
9 because of their own health reasons,  
10 it's not compensable. It would be  
11 something that we would controvert a  
12 claim and say the cause of the thing  
13 was not work-related. They did not  
14 trip on any obstruction, etc. They  
15 just collapsed on the floor. So  
16 therefore it's not covered by the  
17 regulations.

18 Q: Now you used the term  
19 "controverted." Is that, I understand  
20 you know what "to controvert" means,  
21 but is that a term of - as it applies  
22 to...

23 A: It's specifically in the  
24 regulations.

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1 making the, the controversion decision?

2 A: Generally, myself.  
3 Ultimately. They don't go out of the  
4 office without being cleared through  
5 me.

6 Q: We talked at that, you were  
7 aware of Mr. Johnson raising a EEO  
8 complaint concerning some incidents  
9 that happened in the work place. Other  
10 than the non-selection issue. What  
11 more can you tell me about what you are  
12 aware of?

13 A: I was contacted by the  
14 supervisors for advise on a  
15 situation between Mr. Johnson and Irvin  
16 Erickson, where they were blatantly  
17 just not getting along.

18 Q: And what, tell me as  
19 specifically as you can, what  
20 information was made known to you at  
21 that time?

22 A: The quote that I think is  
23 in the record all over about white  
24 person and black skin was made known to

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1 Q: Is that a function that the  
2 agency has under those regulations?

3 A: It's an obligation that the  
4 agency has to prevent fraud and abuse.

5 Q: In, in your experience,  
6 when a claim is controverted by the  
7 agency, if you can put it in terms of  
8 percentages, in what percentage of time  
9 is that controversion upheld?

10 A: I would say fifty fifty or  
11 thereabouts. The reason for  
12 that is controversion can be based on a  
13 person's viewpoint of events and the  
14 document of events, it may not hold  
15 that out and the OWCP is going to work  
16 from what is documented in hand  
17 writing. In other words, a lot of  
18 times a supervisor will say "that  
19 really didn't happen here." And a lot  
20 of times we'll go and support those  
21 controversions based on the  
22 supervisors' information and the record  
23 will uphold it and it will be proved.

24 Q: Now, who's responsible for

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1 me and alleged push or shove incident.

2 Q: Now, were both those  
3 incidents made known to you the first  
4 time you knew anything about anything  
5 going on? Do you understand my  
6 question?

7 A: Well, they were made known  
8 to me the same day they occurred.

9 Q: So, do you understand that  
10 they occurred on different days? What  
11 I'm trying to get at, when you say...

12 A: My memory is yes, they  
13 occurred on different days.

14 Q: And you became aware of  
15 each of them as they occurred?

16 A: Yes.

17 Q: And with respect to, do you  
18 know which of those happened first?

19 A: The verbal statement.

20 Q: And from whom did you learn  
21 about that statement?

22 A: I think it was Rodney  
23 Kiscadden, the supervisor.

24 Q: And what did, he simply



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1 reported you what happened?  
 2 A: He asked for advice.  
 3 Q: What, did you give him  
 4 advice?  
 5 A: Yes.  
 6 Q: What did you tell him?  
 7 A: I told him that you know  
 8 for the immediate future he should try  
 9 to keep these people apart. And then  
 10 refer both of them to employee  
 11 assistance, meanwhile do a fact finding  
 12 to find out exactly what happened.  
 13 Q: What, is there, is there a  
 14 prescribed process for the fact finding  
 15 investigation?  
 16 A: Generally a fact finding is  
 17 an informal investigation, it's  
 18 information that gathered by the first-  
 19 line supervisor, as to an incident.  
 20 Q: And did he have any  
 21 response to what you had instructed or  
 22 advised?  
 23 A: To my knowledge he did the  
 24 fact finding, talked to both parties

010101

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1 proximity, was hearing for the police  
 2 too.  
 3 Q: What did you hear from the  
 4 police?  
 5 A: I think the police were  
 6 involved in an investigation that was  
 7 initiated by Mr. Johnson.  
 8 Q: Did you have conversations  
 9 with anybody from, was it the VA  
 10 police?  
 11 A: The VA police, yes.  
 12 Q: Did you have communications  
 13 with anybody from the VA police?  
 14 A: Not directly because I  
 15 wasn't part of the incident.  
 16 Q: How did you become aware  
 17 that the VA police were involved?  
 18 A: Cause they called me to ask  
 19 who else they thought I should talk to  
 20 that may have been involved.  
 21 Q: They asked who else you  
 22 thought they should talk to?  
 23 A: Right, if there was anyone  
 24 else that they should talk to. It was

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1 and also he tried to separate the  
 2 parties by putting them on different,  
 3 assigning them different units.  
 4 Q: And then when in relation  
 5 to that discussion did you learn about  
 6 there being the incident with the  
 7 alleged shoving?  
 8 A: I think that was shortly  
 9 after the original advice. Either same  
 10 day or the next day. Says my memory is  
 11 anyway that they were separated and  
 12 there was contact between the two which  
 13 would have resulted in the alleged  
 14 shoving.  
 15 Q: You learned about that  
 16 from...  
 17 A: Rodney Kiscadden.  
 18 Q: And what did you, was he  
 19 contacting you again for advice?  
 20 A: Yes.  
 21 Q: And what did you advise?  
 22 A: Again, fact finding, keep  
 23 the complainants apart. I think about  
 24 that same time I was, right in

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1 kind of their calling me secondarily  
 2 towards the end of their investigation.  
 3 Q: Did you understand who they  
 4 had talked to?  
 5 A: They explained to me that  
 6 they had talked to Mr. Johnson and the  
 7 alleged, well, Mr. Erickson who  
 8 allegedly assaulted him.  
 9 Q: Have you talked to anybody  
 10 other than Mr. Kiscadden about the  
 11 matter?  
 12 A: Mr. Stuckey who was  
 13 involved in processing the OWCP  
 14 complaint.  
 15 Q: When did you first talk to  
 16 Mr. Stuckey about the matter?  
 17 A: Probably the same days of  
 18 each, that the claim was filed.  
 19 Q: And what did you talk to  
 20 him about?  
 21 A: He was basically informing  
 22 me of what's going on. We did discuss  
 23 I think which way was the proper way to  
 24 file the claim. I suggested that he

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1 needs to clearly meet with Mr. Johnson  
2 to get his definition of the incident  
3 cause it could be one or the other,  
4 depending on the definition of the  
5 incident.

6 Q: If a traumatic injury claim  
7 is filed, and, you understand CA-1 and  
8 CA-2?

9 A: Uh-huh.

10 Q: CA-1, is that the traumatic  
11 injury claim?

12 A: Uh-huh.

13 Q: And CA-2 would be the  
14 occupational disease.

15 A: Right.

16 Q: If a CA-1 claim is filed...

17 A: Erroneously, you mean?

18 MERSHIMER: Well let him ask  
19 the question.

20 KENT: I don't understand the  
21 question.

22 OSTROWSKI: Because I didn't  
23 ask one yet. But I'm trying to get to  
24 one and I was going to get to that one

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1 CA-2 should have been?

2 A: No, I understand cause it's  
3 happened before. The paperwork would  
4 go to Office of Workmans' Compensation  
5 and they make the determination. If a  
6 CA-1 is filed on an incident that  
7 should have been occupational disease,  
8 they will make a determination, they'll  
9 inform you that you have to  
10 retroactively go back and change from  
11 continuation of pay to either sick  
12 leave or leave without pay for  
13 compensation purposes and correctly  
14 file on the CA-2.

15 Q: Now back to the EEO  
16 complaint regarding the non-selection  
17 issue. Other than your being made  
18 aware of what was going on with that,  
19 did you have any continuing involvement  
20 in that process?

21 A: No, I was involved in the  
22 EEO investigation, providing  
23 information and I was questioned at the  
24 EEO hearing.

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1 but I think I was going to ask you a  
2 different one first. When a CA-1 is  
3 filed, is there an automatic, the  
4 salary continuous benefit?

5 A: The COP?

6 Q: Is that, what does COP mean  
7 again?

8 A: Continuation of Pay.

9 Q: Is that automatic on the  
10 filing of the CA-1?

11 A: On the CA-1 it's part of  
12 the process, yes. It's so much part of  
13 the process, but you cannot stop it  
14 unless a controversion is filed and  
15 approved.

16 Q: But until that  
17 controversion is filed and approved,  
18 does that person continue to receive  
19 pay?

20 A: If they're off duty.

21 Q: Now to the question of, I  
22 think you're not going to understand  
23 before I even ask you, but is there,  
24 what happens if a CA-1 is filed when a

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1 Q: And over what period of  
2 time did all of that occur?

3 A: Oh, top of my head it's  
4 about a year from beginning to the end  
5 but I'm not absolutely sure of the time  
6 frame.

7 Q: Do you know, did the  
8 processing of the non-selection EEO  
9 issue, was that occurring at the time  
10 of the harassment?

11 A: I don't know. All I know  
12 is it was the same hearing.

13 Q: What do you mean it was the  
14 same hearing?

15 A: Both were discussed at the  
16 same hearing.

17 Q: And prior to the hearing,  
18 over what period of time did your  
19 active involvement in providing  
20 information occur?

21 A: From the time that the  
22 informal complaint, well actually from  
23 the time the complaint would have gone  
24 formal an investigator would have been

010101

1 assigned and requested information, I  
 2 don't know the exact time.

3 Q: You can't tell me if it was  
 4 thirty to sixty days, ninety to a  
 5 hundred and twenty days, more than six  
 6 months? Anything along those lines?  
 7 Generally?

8 A: Only I can tell you that  
 9 generally the, you've got like 45 days  
 10 to file an informal complaint.  
 11 Informal complaints can run about 45  
 12 days without an extension. If they get  
 13 an extension they can drag it even  
 14 longer and then there's the formal  
 15 complaint can be filed thirty days  
 16 after the notice of that the informal  
 17 process has not resolved it. They can  
 18 take months and months before they even  
 19 become formal.

20 Q: And then once it becomes  
 21 formal, is there another prescribed  
 22 time period for that to finish?

23 A: There's like a time frame  
 24 that the investigator has to get it

010101

1 either for him to update you or for you  
 2 to ask him to update you?

3 A: Other than the follow-up  
 4 when the, when he had separated Mr.  
 5 Erickson and Mr. Johnson, I don't  
 6 remember specifically, that would've  
 7 followed through with him for  
 8 information or at that point was the  
 9 information was coming from Mr. Stuckey  
 10 who would have more first hand  
 11 information since Mr. Johnson wasn't in  
 12 the workplace anymore.

13 Q: When you first described  
 14 for me what you were contacted about, I  
 15 think you described it as there being  
 16 some personality dispute or some work,  
 17 I think you might have said personality  
 18 dispute between Mr. Johnson and Mr.  
 19 Erickson, is that...

20 A: Generally characterizes it.

21 Q: Now, how, why characterize  
 22 it as a personality dispute?

23 A: Two individuals were not  
 24 getting along. Mr. Johnson had stated

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1 done and I can't remember if it's  
 2 ninety or a hundred twenty days.

3 Q After you became aware of  
 4 both incidents occurring between Mr.  
 5 Johnson and Mr. Erickson, what further  
 6 involvement did you have in any  
 7 communications regarding those back-  
 8 findings that you had advised?

9 A: I don't exactly understand  
 10 that.

11 Q: Yeah, it wasn't real clear.  
 12 You had two conversations with Mr.  
 13 Kiscadden about incidents between Mr.  
 14 Johnson and Mr. Erickson, correct?

15 A: Yes.

16 Q: In each instance, you were  
 17 informed of what happened and  
 18 you were asked to give advice as to  
 19 what to do, correct?

20 A: Yes.

21 Q: What did you, did you have  
 22 any follow-up in connection with either  
 23 of those incidents? Did you contact  
 24 Mr. Kiscadden or did he contact you

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1 that he can't stand to work with Mr.  
 2 Erickson or something to that effect to  
 3 Mr. Kiscadden.

4 Q: And was that something that  
 5 you had learned in either your first or  
 6 second discussion with Mr. Kiscadden?

7 A: From Mr. Kiscadden.

8 Q: Any other reasons why you  
 9 termed it a personality dispute?

10 A: Because it wasn't like I  
 11 can't stand working with everyone  
 12 there, it was with Mr. Erickson.

13 Q: Did you have an  
 14 understanding of what, if there was any  
 15 pre-existing animosity between these  
 16 two employees? Other than that  
 17 statement that you heard from Mr.  
 18 Kiscadden?

19 A: No, not other than the  
 20 statement, didn't have any clear  
 21 information.

22 Q: And when you were (strike  
 23 that). What was the basis of the  
 24 advice that you gave Mr. Kiscadden in

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1 the how to handle those matters?  
 2 A: A basis?  
 3 Q: Meaning were you, were you  
 4 looking at it in terms of this is a  
 5 disciplinary situation or potential  
 6 disciplinary situation and here's what  
 7 needs to be done? Or were you looking  
 8 at it in terms of this is a personality  
 9 dispute and we need to get this matter  
 10 resolved and put behind us?

11 A: This is a on-the-job  
 12 incident that hadn't been determined as  
 13 to what it was yet and needed to have  
 14 more review to determine what it was.  
 15 The advice I gave to separate them was  
 16 to prevent any further expansion of the  
 17 - fight.

18 Q: Now, is it fair to say  
 19 that, excuse me, is it fair to say that  
 20 when you were contacted regarding a  
 21 second incident that your original  
 22 advice wasn't listened to or was...

23 MERSHIMER: I'm going to  
 24 object, excuse me, I'm going to object

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1 apart, and now you tell me that you  
 2 said assign them to different units.  
 3 Which...

4 A: Would keep them apart.  
 5 These people reported to the same area,  
 6 they picked up their keys in the same  
 7 area, they turned in their keys in the  
 8 same area. The Medical Center is not  
 9 that huge that you are not going to run  
 10 into each other. It's virtually a  
 11 physical impossibility to keep them  
 12 apart if they are going to work during  
 13 the same time frames of the day.

14 Q: Haven't there been  
 15 investigations or, of workplace kind of  
 16 in the past where for example you  
 17 assign someone to the laundry area  
 18 while you conducted an investigation of  
 19 what was going on?

20 A: Yes, for limited reasons.  
 21 We generally do that when there's an  
 22 allegation of patient abuse so that we  
 23 can prevent any possible recurrence,  
 24 while we find out what's going on.

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1 to the form of the question. You can  
 2 go ahead and answer.

3 KENT: Okay. My original  
 4 advice was not to, my advice was to  
 5 keep them apart, try to calm down the  
 6 situation and from my understanding  
 7 they were separated. Two different  
 8 units on a building.

9 OSTROWSKI: So if they were, if  
 10 a couple days later, and there's an  
 11 alleged shoving incident between these  
 12 two employees, then one or the other  
 13 violated the instruction to stay away  
 14 from the other, correct?

15 MERSHIMER: I'm going to object  
 16 to the form of the question.

17 KENT: I don't know what Mr.  
 18 Erickson was told. I didn't tell him.  
 19 I told the supervisor to assign them to  
 20 different units and that was done.

21 Q: Just try to be real clear  
 22 on exactly what you told Mr., what you  
 23 told the supervisor because first you  
 24 told me, you told him to keep them

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1 What happened.

2 Q: So in that sense, I'm just  
 3 trying to understand further the basis  
 4 for the difference there. By assigning  
 5 someone to laundry you can assure that  
 6 there will be no contact between the  
 7 patients and the employees?

8 A: The patient and the  
 9 employee, yes.

10 Q: As opposed to two co-  
 11 workers you can assign them to  
 12 different units but the chances are  
 13 they're still gonna have some contact?

14 A: They're gonna rub shoulders  
 15 at shift change, etc.

16 Q: What was the result of Mr.  
 17 Kiscadden's back findings with regard  
 18 to the two separate incidents between  
 19 Mr. Johnson and Mr. Erickson? If you  
 20 understand, he found...

21 A: Results, meaning what facts  
 22 were established?

23 Q: Yes, what facts were  
 24 established?

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1 A: Don't know them directly  
2 because I didn't do the investigation.  
3 Mr. Kiscadden would, I know it's in the  
4 record on the OWCP forms, etc. Claim  
5 forms. But I don't know that that's  
6 anywhere in a defined document, it  
7 would be just a fact finding opinion of  
8 the supervisor anyway.

9 Q: Now, do you have any reason  
10 to disagree with the fact that Mr.  
11 Erickson stated to Mr. Johnson  
12 something to the effect that, "Hey  
13 you're brothers say that you're a black  
14 man in a white man's skin?"

15 A: I wouldn't be able to tell  
16 one way or the other. I wasn't there.  
17 Mr. Erickson never told me personally  
18 that's what he said. I wasn't involved  
19 in the investigation.

20 OSTROWSKI: Do you believe that  
21 that happened?

22 MERSHIMER: I'm going to object  
23 to the form of that question, but go  
24 ahead and answer it.

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1 A: Absolutely, you need to  
2 know what all the facts were that were  
3 gathered as to what exactly happened  
4 before you make a determination,  
5 whether it would be disciplinary or not  
6 result.

7 OSTROWSKI: So the Veteran's  
8 Administration maintains an employment  
9 environment where somebody could say  
10 "You're a no good fucking nigger" and  
11 that would be tolerable conduct? That  
12 and other facts.

13 MERSHIMER: Object to

14 KENT: How do you know

15 MERSHIMER: Wait, wait, let me  
16 object to the form of the question. Go  
17 ahead.

18 KENT: How do you come to that  
19 conclusion?

20 Q: Well because you're saying  
21 that yeah, someone could say that and  
22 there wouldn't be a problem but we  
23 would have to do an investigation.

24 A: What I'm saying, I'm saying

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1 KENT: I think the record shows  
2 that some sort of a comment about being  
3 a white man in a black man's skin, that  
4 piece happened. As to what context,  
5 etc., I don't know.

6 Q: Now what, if you'll assume  
7 that that has been an established fact,  
8 should there be any consequence to Mr.  
9 Erickson as a result of that?

10 A: That's conjecture.  
11 Besides, that in and of itself wouldn't  
12 be enough information to determine. If  
13 I said something to you in the midst of  
14 a joke and it's the punch line of the  
15 joke, I don't think you'd be  
16 disciplining me for it, you know,  
17 delivering the punch line of a joke  
18 even though it may be off color.  
19 Context could have broad meaning.

20 Q: So, if Mr., if Mr. Erickson  
21 had said to Mr. Johnson, "You're  
22 nothing but a no good fucken nigger,"  
23 same result? You would need to know  
24 the context for what was said?

010101

1 that not do disciplinary action until  
2 they know the facts of the case. If  
3 facts support discipline, discipline is  
4 taken.

5 Q: And somebody saying to  
6 somebody else, "You're just a white man  
7 in a black man's skin", it does not in  
8 itself warrant disciplinary action?

9 A: I can't make that  
10 determination. I can tell you that is  
11 not common, that is acceptable in our  
12 workplace.

13 Q: And if it's, you can say  
14 that's conduct that's not acceptable in  
15 the workplace. Is that what you said?

16 A: Yes.

17 Q: What do you do with conduct  
18 that is unacceptable in the workplace?

19 A: A variety of different  
20 things, ranging from cease and desist  
21 orders to counselings, to discipline,  
22 to adverse actions.

23 Q: Now is there a difference  
24 between a counseling and discipline?

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1 A: Yes.  
 2 Q: What's the difference?  
 3 A: It's a formal level.  
 4 Discipline is formally recorded in your  
 5 official personnel folder. It's a  
 6 permanent part of your permanent  
 7 record. A counseling is a, between the  
 8 supervisor and the employee, if, it's  
 9 basically a building block for  
 10 discipline, as far as the progressive  
 11 process.  
 12 Q: And is there a term,  
 13 something you're familiar with, called  
 14 an admonishment?  
 15 A: An admonishment is the  
 16 first level of formal discipline.  
 17 Q: And what is an  
 18 admonishment?  
 19 A: It's a written censure  
 20 that's placed in your official  
 21 personnel folder for a time limited  
 22 period.  
 23 Q: And is that discipline?  
 24 A: Absolutely.

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1 13 disrespectful conduct, "use of  
 2 insulting, abusive or obscene language  
 3 to or about other personnel" and it has  
 4 as the first level of discipline a  
 5 reprimand which I, can I assume that a  
 6 reprimand is a level above  
 7 admonishment?  
 8 A: One level above.  
 9 Q: And just so we get the  
 10 levels down, you have admonishment,  
 11 reprimand, five days, ten days,  
 12 discharge.  
 13 A: Well, not five days, ten  
 14 days, but suspension of varying levels,  
 15 discharge.  
 16 Q: Why didn't, now you  
 17 understand that (strike that). How did  
 18 Mr. Kiscadden, if you have an  
 19 understanding, how did Mr. Kiscadden  
 20 learn about the matter where Mr.  
 21 Erickson said to Mr. Johnson something  
 22 to the effect that you're a white man  
 23 in a black man's skin? Did you  
 24 understand what...

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1 Q: And counseling is not, not  
 2 formal discipline?  
 3 A: Not formal discipline.  
 4 Q: I'm going to hand you a  
 5 document marked as Exhibit 10, one  
 6 through nine was pretty short. Could  
 7 you, if you've had a chance to review  
 8 that.  
 9 A: Don't have to review it. I  
 10 helped write it.  
 11 Q: Can you tell me what that  
 12 is?  
 13 A: That's a table of penalties  
 14 as attached to our discipline policy  
 15 for the Medical Center.  
 16 Q: And this starts, it appears  
 17 that the most, the most minimal level  
 18 of discipline is an admonishment.  
 19 A: Of formal discipline, yes.  
 20 Q: Consistent with what we've  
 21 been discussing.  
 22 A: Yes.  
 23 Q: There's no, no notion of a  
 24 (strike that). Now this covers at item

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1 A: Yes, I do understand the  
 2 question but I can't swear with any  
 3 honesty I know exact answer to that.  
 4 Q: Do you know, I mean, do you  
 5 believe that Mr. Johnson came in and  
 6 reported that to him?  
 7 A: I think so, but I can't,  
 8 like I said, I can't swear to that.  
 9 Q: Why, on that fact alone,  
 10 was not item 13 at play in that  
 11 instance?  
 12 A: Decisions like that are not  
 13 made based on that fact alone.  
 14 Q: Are you aware that Mr.  
 15 Erickson was never disciplined for  
 16 making that statement to Mr. Johnson?  
 17 A: No.  
 18 Q: No, you're not aware or...  
 19 A: No, I'm not aware.  
 20 Discipline for those lower levels can  
 21 be given by the immediate supervisor  
 22 directly.  
 23 Q: Do you have any knowledge  
 24 or information indicating that Mr.



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1 Erickson was disciplined?

2 A: No.

3 Q: I'm going to hand you a  
4 document marked as Exhibit 11. Why  
5 don't you just go ahead and view that.  
6 I'm going to go ahead and give you  
7 that. Have you seen that document  
8 before?

9 A: Yes.

10 Q: Am I in your way when I'm  
11 up here? Does this, November 1, 1999  
12 letter to the Office of Workmans'  
13 Compensation program from Joseph  
14 Stuckey. When did you first see this  
15 letter?

16 A: Sometime after November 1<sup>st</sup>,  
17 don't know specifically when.

18 Q: And does this letter, does  
19 this contain a controversion?

20 A: This letter is verification  
21 that we weren't sure which way to file  
22 the claim.

23 Q: Well I'm going to refer you  
24 specifically to the second page, it

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1 first paragraph says right at the end  
2 of it, "This claim is being  
3 controverted based on the information  
4 contained..."

5 A: Oh there's the word.

6 Q: So this is a controversion?

7 A: Of the traumatic claim.

8 Q: Now where, where does it  
9 appear in here that there was some  
10 confusion as to what information was  
11 being, or how this claim was being  
12 processed or how to process it?

13 A: I can't specifically cite  
14 it. I just know that there was, that  
15 was going on at the time.

16 Q: And there's a reference in  
17 here, at the second page, the paragraph  
18 above the one that I read to you,  
19 refers to Acute Partial Day Hospital at  
20 Philhaven Hospital, "Mr. Johnson has  
21 failed to provide medical documentation  
22 to support his allegation of a  
23 traumatic injury." Do you know if Mr.  
24 Johnson provided any medical

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1 says, "After review of the information  
2 provided, it cannot be concluded that  
3 there is a cause of relationship  
4 between the incident that occurred and  
5 counseling that Mr. Johnson is  
6 undergoing. Therefore, it would be  
7 suggested that this claim for traumatic  
8 injury would be denied." Is that, in  
9 your experience, is that language a  
10 controversion?

11 A: No, generally we use the  
12 word controversion, in fact we title it  
13 "controversion". In fact there's a  
14 format right in the claim form to cite  
15 controversion.

16 Q: Now you said that this is,  
17 this is evidence of there being some  
18 confusion, I think that's what you  
19 said.

20 A: Confusion as to was it a  
21 traumatic injury or was it a  
22 occupational illness or disease. We  
23 did not not process the claims.

24 Q: On my last question, the

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1 documentation?

2 KENT: Subsequently, medical  
3 documentation was provided but I don't  
4 know what time frame it was provided  
5 in.

6 MERSHIMER: I want to put an  
7 objection on the record because you  
8 only read part of the sentence.

9 OSTROWSKI: Read the whole  
10 thing then, I don't wanna...

11 MERSHIMER: "There has been no  
12 medical information provided from Dr.  
13 Brinser's office to support that Mr.  
14 Johnson sustained a traumatic injury,  
15 causily related to the incident at the  
16 Medical Center."

17 OSTROWSKI: The only reason I  
18 didn't read that whole sentence is  
19 because that's not the sentence I was  
20 reading.

21 MERSHIMER: I'm sorry.

22 OSTROWSKI: I was in the next  
23 paragraph down. Any additional, or  
24 "Mr. Johnson has failed to provide

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1 medical documentation to support his  
2 allegations..."

3 MERSHIMER: "Of traumatic  
4 injury." You're right, I'm sorry.

5 OSTROWSKI: Because I wanted to  
6 ask in specific respect to the  
7 Philhaven hospital information. If Mr.  
8 Stuckey, or if an OWCP claim is being  
9 processed, before it's admitted to  
10 OWCP, how is medical information  
11 gathered?

12 A: The information gathered?  
13 We, for instance, either the employee  
14 who is filing the claim takes a medical  
15 documentation form along to his doctor  
16 or we are informed to send one directly  
17 either to the employee or the doctor.

18 Q: The copy of the document  
19 marked as Exhibit 12. If you look at,  
20 this is a purports to be a faxed copy  
21 of an authorization for release of  
22 information from Philhaven to you. And  
23 signed by Mr. Johnson and a witness,  
24 reportedly on October 21, 1999.

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1 A: He called at the request of  
2 Mr. Johnson to discuss the issue is at  
3 the VA's, what was going on, whether  
4 the workplace would be modified, and  
5 they asked questions. He asked more  
6 questions but he gave the information.  
7 For instance he asked, would we try to  
8 keep these employees apart if he was  
9 returned to duty? I think it says "2  
10 of 2". There wasn't anything else that  
11 came with this.

12 Q: I'm sorry, what were you...

13 A: Two of two pages. This  
14 being page one, this being page two.

15 Q: This is an authorization  
16 for you to get information from  
17 Philhaven concerning Mr. Johnson's  
18 treatment, correct?

19 A: Absolutely, but it isn't  
20 any information.

21 Q: Understood. If OWCP needed  
22 information, all they had to do was  
23 call Philhaven and ask them to send it,  
24 right, after processing a form?

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1 Correct?

2 A: Yes.

3 Q: On the second page of that  
4 document, is that the stamp at the  
5 bottom, Received Human Resources  
6 October 21, 1999, VA Medical Center,  
7 Lebanon, PA. Is that your office  
8 stamp?

9 A: Yes.

10 Q: So if there's no medical  
11 information...

12 A: This came at the time of  
13 the phone call.

14 Q: Okay, tell me more, what do  
15 you mean it came at the time of the  
16 phone call?

17 A: In my memory, this was  
18 faxed when this counselor, John, I  
19 can't remember exactly how that,

20 Q: I think it's Snively?

21 A: Swickley or Sickly or  
22 Snickly or something like that, called  
23 me.

24 Q: And why did he call you?

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1 A: Sure. I mean, but it has  
2 to be released by Mr. Johnson.

3 Q: Right. And, and that form,  
4 you were saying, is authorizing the  
5 release of it.

6 A: Yes. To my knowledge we  
7 did get information from Philhaven.

8 Q: But you said you didn't get  
9 it until after the claim was  
10 controverted?

11 A: We didn't get, this letter  
12 says we didn't get information to  
13 support a traumatic injury. It did not  
14 say we did not get information to  
15 support filing a claim.

16 Q: Okay, so this is, this  
17 sentence that we read about, failed to  
18 provide medical documentation to  
19 support his allegation of a traumatic  
20 injury, that's an evaluative statement?

21 A: Exactly.

22 Q: Okay, not just a statement  
23 of fact. As we didn't get  
24 documentation.



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1 A: It doesn't say that we  
2 didn't get information, it says we  
3 didn't get information that in Mr.  
4 Stuckey's opinion, supported traumatic  
5 injury claim.

6 Q: Now, Mr. Johnson indicated  
7 at some point there were thirteen pages  
8 of medical information faxed to you.  
9 Do you have any recollection of that?

10 A: I do have recollection of  
11 getting medical information from  
12 Philhaven. I think it's part of the  
13 file.

14 OSTROWSKI: Okay. That's all  
15 the questions I have. Thank you.

16 MERSHIMER: I think I'd like to  
17 ask some questions, but can we take a  
18 break first?

19 OSTROWSKI: Sure, sure can.

20 LYDE: 11:28 am we'll finish  
21 for a break.

22 MERSHIMER: Mr. Kent, oh, I'm  
23 sorry.

24 LYED: 11:45 am, we're back on

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1 correct?

2 A: Exactly.

3 Q: Was, before that, all the  
4 Housekeepers had been in something that  
5 you referred to as EMS?

6 A: Environmental Management  
7 Service.

8 Q: Did EMS remain after the  
9 change in 1997?

10 A: It remained as a unit for  
11 centralized - and the laundry function,  
12 as part of operations unit.

13 Q: Now there was some  
14 questions about the non-selection of  
15 Mr. Johnson for a Housekeeping Aide  
16 position?

17 A: Yes.

18 Q: And was that non-selection,  
19 do you know who was the deciding  
20 official?

21 A: The head nurse would  
22 normally be the interviewing official  
23 recommending officially on paper. The  
24 deciding official would be the private

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1 record. Thank you.

2 MERSHIMER: Mr. Kent, this  
3 fourth page of Exhibit 9 that was the  
4 Memorandum of Understanding, it's  
5 signed by you and Ms. Winters. Is that  
6 correct?

7 KENT: Yes, well actually, it's  
8 signed by Ms. Winters and Timothy Shea,  
9 who's the acting CEO at the time.

10 Q: Okay, do you know when that  
11 document was signed?

12 A: Not exactly from memory.  
13 It would have been when we were just,  
14 when we announced the RIF, and had  
15 placed people in temporary assignments,  
16 pending the RIF, so would have been  
17 '97, either, somewhere in '97, probably  
18 November of '97 but that's just a  
19 guess.

20 Q: Okay. Thank you. You had  
21 also talked about how there was a  
22 reorganization of Housekeeping in 1997  
23 where Housekeeping Aides were assigned  
24 to different product lines. Is that

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1 line manager.

2 Q: Okay, do you know, and if  
3 you don't know, just tell me you don't  
4 know. Was Alice Fidler the selecting  
5 official?

6 A: She was the head nurse in  
7 the unit where the position was vacant.  
8 So she would have obviously been  
9 involved and her opinion would have  
10 been primary.

11 Q: Okay, well whoever was the  
12 selecting official for this  
13 Housekeeping position that Mr. Johnson  
14 didn't get, that's the underlying part  
15 of this lawsuit. Did that person have  
16 to select Mr. Johnson based on  
17 seniority?

18 A: No.

19 Q: How come?

20 A: Mr. Johnson was referred as  
21 a reassignment candidate. Reassignment  
22 candidates, under the terms of the  
23 master agreement can be considered,  
24 seniority is one of the factors that

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1 will be used when making a selection  
 2 for reassignment, but other good faith  
 3 criterion will be utilized in making  
 4 the selection. Also, reassignment  
 5 wasn't the only certificate, I think  
 6 that was issued on this vacancy  
 7 announcement. So they, the selecting  
 8 official could have used one of the  
 9 other lists of candidates. There is  
 10 not in the contract a better definition  
 11 as to what's used. It's not a  
 12 formalized process, the master  
 13 agreement eludes that if you want to  
 14 formalize it, you'd have to do that at  
 15 the local level.

16 Q: Mr. Johnson had submitted  
 17 what was known as a CA-1 traumatic  
 18 injury form for Workmans' Compensation?  
 19 Is that correct?

20 A: I think he submitted both,  
 21 CA-1 and the CA-2, eventually.

22 Q: Okay. Was the CA-1 granted  
 23 or denied? Do you know?

24 A: Both forms, to my knowledge

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1 Q: Okay, did you have any  
 2 discussions at any point with Mr.  
 3 Dumas?

4 A: During the intervening  
 5 period after the incidents had taken  
 6 place, during the EEO process, Mr.  
 7 Dumas would represent Mr. Johnson in  
 8 discussions with us.

9 Q: Okay. Do you recall  
 10 anything specific that you and he ever  
 11 discussed?

12 A: Not off the top of my head.

13 Q: Okay, and Mr. Dumas, he's  
 14 an African American male, correct?

15 A: Absolutely.

16 Q: Do you, well, I'll ask you  
 17 a different way. He had indicated to  
 18 me that at one point you had said to  
 19 him and Mr. Johnson, "I'm tired of  
 20 doing things for you people." Did you  
 21 ever make that statement to him?

22 A: Absolutely not.

23 Q: That's the only question I  
 24 have. Oh, let me just follow up. Do

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1 were transmitted to OWCP in  
 2 Philadelphia and both claim, no claim  
 3 was approved.

4 Q: And who was the one that  
 5 made the decision whether to grant  
 6 Workmans' Compensation benefits?

7 A: The Office of Workman's  
 8 Compensation Programs in Philadelphia,  
 9 Pennsylvania.

10 Q: Is there any, do you know  
 11 if there's any timelines that govern  
 12 how long they'll take to decide whether  
 13 to grant or deny a claim?

14 A: They may have internal  
 15 guidelines but there's no - guidelines.

16 MERSHIMER: That's all I have.

17 OSTROWSKI: Thank you, I want  
 18 to follow-up, just a couple things I  
 19 didn't ask before. Do you know a  
 20 gentleman by the name of William Dumas?

21 KENT: Yes, he lives in  
 22 Lebanon, Pennsylvania, one time he  
 23 represented Mr. Johnson at the EEO  
 24 hearing in Philadelphia.

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1 you recall any discussion where you,  
 2 you and he and perhaps Mr. Johnson were  
 3 discussing a perception that they were  
 4 not being cooperated with through the  
 5 VA?

6 A: There may have been such a  
 7 discussion because those discussions  
 8 seem to go on and on. Yes.

9 Q: And did you ever make any  
 10 indication to him that anything along  
 11 the line that you had done enough for  
 12 them, that you couldn't do anything  
 13 more?

14 A: I probably told them that  
 15 we had done all that we could do. The  
 16 claim was now at the OWCP. It was  
 17 their determination. He had a hard  
 18 time understanding that we didn't make  
 19 the decisions on OWCP.

20 OSTROWSKI: That's all I have.  
 21 Thank you.

22 MERSHIMER: Just a follow-up.  
 23 Is Mr. Dumas, do you know, is he an  
 24 attorney?

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1 KENT: I don't think he is.  
2 MERSHIMER: Okay. That's it.  
3 LYED:: 11:52 am, the  
4 deposition of Raymer Kent has  
5 concluded. Thank you.  
6

EXHIBIT B

SHEET 1 PAGE 1

1 3  
 2 IN THE UNITED STATES DISTRICT COURT  
 3 FOR THE MIDDLE DISTRICT PENNSYLVANIA  
 4 LEWIS JOHNSON, : 1:CV-00-1873  
 5 :  
 6 Plaintiff :  
 7 :  
 8 vs :  
 9 :  
 10 HERSHEL W. GOBER, :  
 11 Acting Secretary of :  
 12 Veterans Affairs; :  
 13 Et al. :  
 14 VIDEO DEPOSITION:  
 15 Rodney Kiscadden  
 16 DATE: April 8, 2002  
 17 PLACE:  
 18 Andrew Ostrowski Office  
 19 4311 N. 6th Street  
 20 Harrisburg, Pa 17110  
 21 APPEARANCES:  
 22 Andrew Ostrowski  
 23 4311 N. 6th Street  
 24 Harrisburg, PA 17110  
 25 Kate L. Mershimer  
 26 U.S. Attorney's Office  
 27 228 Walnut Street  
 28 Harrisburg, PA 17108

ORIGINAL

PAGE 3

1 CRYSTAL LYDE: The whole name, please.  
 2 RODNEY KISCADDEN: Rodney Kiscadden, R O  
 3 D N E Y, Kiscadden, is K -I- S- C-A -D -D- E-  
 4 N.  
 5 CRYSTAL LYDE: Do you so swear to tell  
 6 the whole truth nothing but the truth so help  
 7 you God.  
 8 RODNEY KISCADDEN: I do.  
 9 CRYSTAL LYDE: Thank you. May I have a  
 10 voice check around the room please.  
 11 KATE MERSHIMER: Kate Mershimer, counsel  
 12 for defendant, defendants.  
 13 RODNEY KISCADDEN: Rodney Kiscadden.  
 14 GALE MCLUCAS: Gale McLucas from the  
 15 court-reporting firm of Filuis & McLucas.  
 16 ANDY OSTROWSKI: Andy Ostrowski, counsel  
 17 for the plaintiff.  
 18 STUART JOHNSON: Johnson, Stuart Johnson.  
 19 CRYSTAL LYDE: Thank you. Usual  
 20 stipulation.  
 21 KATE MERSHIMER: Yes, full reserve  
 22 objections, other than the form of question,  
 23 and a witness will reserve the right to read  
 24 and sign.  
 25 ANDY OSTROWSKI: Okay. Mr. Kiscadden, my

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1 CRYSTAL LYDE: Good afternoon ladies and  
 2 gentlemen, please be advised the video and  
 3 audio is in operation. My name is Crystal M.  
 4 Lyde, L Y D E, my address is 4310 Hillsdale  
 5 Road, Harrisburg, Pennsylvania, 17112. I've  
 6 been contracted by PR Video Incorporated to  
 7 be the operator for this deposition. The  
 8 case is in the United States district court,  
 9 for the Middle District of Pennsylvania the  
 10 captain is Louis Johnson vs. Herschel Gober  
 11 et.al. The docket number is 1CD-011873. The  
 12 date is April 8, 2002. The deposition is  
 13 being held at the law office of Andrew  
 14 Ostrowski, 4311 N. 6th St. Harrisburg,  
 15 Pennsylvania, 17110. The video deposition is  
 16 being taken on behalf of plaintive Louis  
 17 Johnson. The witnesses name is Rodney  
 18 Kiscadden. Is that correct?  
 19 RODNEY KISCADDEN: Correct.  
 20 CRYSTAL LYDE: The time now is one of  
 21 1:04 PM. Will you raise your right hand for  
 22 me please? State your name for the record,  
 23 and spell it.  
 24 RODNEY KISCADDEN: The whole name or just  
 25 the last?

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1 name is Andy Ostrowski. We were introduced  
 2 shortly before you sat down here today. You  
 3 understand you're here today to give a  
 4 deposition in connection with a lawsuit that  
 5 Louis Johnson has brought against the  
 6 Veterans Administration and persons  
 7 associated with the Veterans Administration.  
 8 RODNEY KISCADDEN: Yes.  
 9 ANDY OSTROWSKI: Okay, have you ever  
 10 given a deposition before?  
 11 A: No.  
 12 Q: All right, essentially what it is,  
 13 and I am sure you have probably had the  
 14 opportunity to review some of the details,  
 15 background with Miss Mershimer, but your name  
 16 has surfaced as someone who, we believe has  
 17 knowledge or information relevant or material  
 18 to Mr. Johnson's lawsuit. Under the rules  
 19 governing the federal litigation process,  
 20 we're entitled to call witnesses in to get  
 21 depositions as statements under oath. You  
 22 know, for purpose, for, you know preparation  
 23 for trial, for use of trial, if we need to  
 24 use them for trial. It's a question answer  
 25 session, where I'll be asking you questions

SHEET 2 PAGE 5

1 and you'll be responding to my questions  
 2 verbally. Before you answer a question, it's  
 3 important that you hear and understand  
 4 question, so if any of my questions that are  
 5 not clear, and there's anything I can do to  
 6 make it clear, or help you understand, stop  
 7 me before you answer the question and ask me,  
 8 okay. Yes or a no.

9 A: Yes, Sir.  
 10 Q: Okay, and if during the course of the  
 11 deposition, you have a question about  
 12 anything, I have no problems whatsoever to  
 13 try and clarify anything, any questions you  
 14 may have. Okay?

15 A: Sure.

16 Q: Okay. How are you currently  
 17 employed?

18 A: I'm employed by the VA Medical  
 19 Center, in Lebanon Pennsylvania.

20 Q: As what? What's your position?

21 A: Supervisor.

22 Q: Supervisor of what?

23 A: EMS

24 Q: Okay, and EMS is what?

25 A: Environmental Management Service.

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1 understanding of.

2 Q: The same areas of responsibility?

3 A: Well, we do have an area that we  
 4 cover, but we basically do the same job.

5 Q: Okay, how many supervisors are their?

6 A: Three.

7 Q: Okay. And who are the other two?

8 A: Russell Tusick, and Kevin Walton.

9 Q: Okay. And are you familiar with the  
 10 first name, Carolyn McGguigan?

11 A: Yes, I'm familiar with her.

12 Q: And what is her position?

13 A: Retired.

14 Q: Okay. When did she retire?

15 A: I don't know that date.

16 Q: Okay. When she was with the Veterans  
 17 Administration what was her position?

18 A: Well, she was in charge of the EMS  
 19 and food service. I'm not sure exactly where  
 20 title was, because she was there many years  
 21 and she was a great, great woman.

22 Q: Okay.

23 A: I don't know.

24 Q: I'm sorry.

25 A: I don't know what exact title you

PAGE 6

1 Q: Okay. And how long have you been  
 2 supervisor of Environmental Management  
 3 Service?

4 A: Since 1990.

5 Q: Okay. And how, who is your, your  
 6 supervisor?

7 A: Lori Dulac.

8 Q: Lori Dulac? Could you spell Dulac?

9 A: D-U-L-A-C

10 Q: And what is Ms. Dulac's position?

11 A: Manager

12 Q: Manager of what?

13 A: EMS

14 Q: Okay. Do you and she share the same  
 15 title?

16 A: No.

17 Q: What did...

18 A: Actually I'm the supervisor.

19 Q: Supervisor. Okay, and are there other  
 20 supervisors of EMS?

21 A: Yes

22 Q: Okay, are there different areas of  
 23 responsibility assigned to the different  
 24 supervisors?

25 A: We all basically have the same

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1 would say.

2 Q: Okay, that's fair enough. Was she  
 3 your supervisor at the time?

4 A: Yes, she was.

5 Q: Okay. And the person who was there  
 6 now, what was the name of the, Lori Dulac.

7 A: Lori Dulac.

8 Q: Dulac. How long has Ms. Dulac been in  
 9 that position? Managers position?

10 A: Since July or August of last year.

11 Q: Okay, and prior to her being in that  
 12 position, who held that position?

13 A: Me.

14 Q: You were manager?

15 A: Yes.

16 Q: Okay. Why are you no longer manager?

17 A: She got the position.

18 Q: Did you get demoted?

19 A: I don't know if you want to say  
 20 demoted. I guess you could say I went back  
 21 to my original position.

22 Q: How long... I'm sorry to interrupt  
 23 you. How long were you manager?

24 A: Between the time that Carolyn left  
 25 and Lori arrived, which I'm really not sure



SHEET 3 PAGE 9

1 of the time frame there.

2 Q: Okay, and were you filling that  
3 position in an acting capacity?

4 A: Yes.

5 Q: Okay. So, after Ms. McGuigan left,  
6 there was a process of filling that vacancy,  
7 and during that period of time you were  
8 designated to serve in that position.

9 A: That is correct.

10 Q: Okay, did you apply for that  
11 position?

12 A: Yes, I did.

13 Q: Okay. And, through the selection  
14 process, Ms. Dulac got it, and you went back  
15 to being the supervisor.

16 A: That is correct.

17 Q: Was Ms. Dulac a, was she supervisor  
18 previously?

19 A: She wasn't from the VA.

20 Q: Oh, she wasn't, okay. Do you know,  
21 was she with the federal government?

22 A: No.

23 Q: Okay, so other than that brief period  
24 of time. At all times, at least since 1990,  
25 you've been a supervisor in Environmental

PAGE 11

1 A: I would say about 47. I'm not sure  
2 exactly, at this particular time, cause there  
3 are some vacancies.

4 Q: Okay, and so is it fair to conclude  
5 that EMS, it's pretty much the housekeeping  
6 department.

7 A: Definitely, yes.

8 Q: Okay, there's not, there's not  
9 significant other areas of responsibilities  
10 that are performed by EMS?

11 A: No, most of our job is housekeeping.

12 Q: Okay. Currently can you tell me how  
13 many African-American house keepers, or  
14 employees there are in housekeeping?

15 A: I don't know that figure right off  
16 the top of my head.

17 Q: Okay. Can we estimate? Is it?

18 A: I wouldn't want to say something that  
19 is incorrect at the moment.

20 Q: I understand, we'll only hold you to  
21 what you can say with certainty. Just the  
22 ballpark, is less than five, more than five?

23 A: Could be less than five at this  
24 particular time.

25 Q: Okay. And has that number, the

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1 Management Services?

2 A: That is correct.

3 Q: Of the VA, okay. Describe for me as  
4 specifically as you can what your job  
5 entails; what areas of supervision you have,  
6 what employees are underneath you, what their  
7 responsibilities are, things of that nature.

8 A: Supervise the house keeping people,  
9 make sure they're taking care of the workers,  
10 be responsible for, and I also do the  
11 supplies, basically.

12 Q: What kind of supplies?

13 A: Making sure that the supplies are  
14 being kept up to, up to their capacity. I  
15 guess you could say.

16 Q: All supplies that use in housekeeping  
17 services.

18 A: Yes and housekeeping services.  
19 That's correct.

20 Q: Okay. And how many housekeeping,  
21 strike that, how many total employees are  
22 there, employed in EMS?

23 A: Right now we have about 52, that's  
24 including the supervisors and clerical staff.

25 Q: And how many housekeeping personnel?

PAGE 12

1 overall number of the African American  
2 employees, has that changed significantly  
3 over any period of time?

4 A: Yes, it is up and down because of  
5 the, the way we ran the weekend staff.

6 Q: Okay. What was the highest number  
7 you can ever recall?

8 A: I don't know.

9 Q: Okay. And what do you mean, the way  
10 we ran the weekend staff?

11 A: It used to be, we used to have part  
12 time now we have, it's all full time.

13 Q: Okay, and when did that change take  
14 place?

15 A: I don't know.

16 Q: You at some point in your, the course  
17 of your work, supervised Mr. Johnson,  
18 correct?

19 A: That's right. Yes.

20 Q: Okay. What kind of employee was he?

21 A: He was the average employee.

22 Q: Okay, no better, no worse than any  
23 other employees?

24 A: No. No.

25 Q: Are there any, can you identify

SHEET 4 PAGE 13

1 any instances where you considered Mr.  
2 Johnson to have been a problem? As far as  
3 quality of his work or the amount of  
4 supervision that was required of him.

5 A: No.

6 Q: Okay. How, try to keep this as  
7 confined to the extent you can, to the period  
8 1998/1999. Okay. How were housekeeping  
9 assignments conducted? From what I understand  
10 housekeeping positions are performed, the  
11 actual work is performed all over the VA.  
12 Correct?

13 A: That's correct.

14 Q: Okay. How was it determined, how  
15 those positions were, the day-to-day task,  
16 were to be assigned? Did you do it by  
17 building a floor unit?

18 A: You're saying, there are certain  
19 areas in the hospital that certain  
20 individuals do every day. They're assigned  
21 that area.

22 Q: Okay, and that's how things are  
23 conducted? Is that how all housekeeping  
24 employees were assigned, two specific areas  
25 for everyday?

PAGE 14

1 A: I would say 90% did have a relief  
2 crew.

3 Q: Okay. Is a relief crew, is that  
4 what's called floaters?

5 A: Relief, floaters.

6 Q: When I use, when you use the term  
7 floaters, is that anything other than someone  
8 who fills in an area, that for some reason or  
9 another, an employee is not; a regularly  
10 scheduled employee is not in attendants on a  
11 particular day.

12 A: That would describe it the best.

13 Q: Okay. How the buildings are there at  
14 the Lebanon VA?

15 A: There's a lot of buildings, but if  
16 you're say how many we clean, there's.

17 Q: How many do you clean?

18 A: Well, there's at least ten.

19 Q: Okay.

20 A: I could be wrong.

21 Q: And for each of those ten buildings,  
22 are there staff that are regularly assigned  
23 to those buildings, to do the cleaning  
24 functions for those buildings?

25 A: Yes.

PAGE 15

1 Q: Is, is Irvan Erickson, is he still  
2 employed at the VA?

3 A: Yes.

4 Q: Is he still in EMS?

5 A: Yes.

6 Q: And, what is his current position?

7 A: He's relief.

8 Q: Relief. How long has he been doing  
9 that?

10 A: I can't answer that. I don't know,  
11 because he was on a ward.

12 Q: Okay, when, when, what ward was he  
13 assigned to?

14 A: Last one I know of is 128.

15 Q: Okay, now why did his assignment  
16 change from assignment to a ward, to a relief  
17 assignment?

18 A: I don't know.

19 Q: Do you know when that occurred?

20 A: No.

21 Q: What kind of an employee is Mr.  
22 Erickson?

23 A: Average.

24 Q: Average. Has he ever been  
25 disciplined for anything?

PAGE 16

1 A: The only thing I'm aware of is a  
2 counseling that myself and Ms. McGuigan gave.

3 Q: And, what do you give him that  
4 counseling for?

5 A: For the, the things that were done  
6 towards Mr. Johnson.

7 Q: Okay. We'll talk more about that.  
8 Let's talk about, I guess, about the things  
9 that were done to Mr. Johnson. When you say  
10 that, what things that were done to Mr.  
11 Johnson are you talking about?

12 A: There was supposed to be, and I'm,  
13 things that were quoted to him that weren't  
14 supposed to, that were offensive to Mr.  
15 Johnson.

16 Q: Okay. Do you recall what that thing  
17 was, or those things?

18 A: A white man in a black man's skin. I  
19 think that's what the quote was.

20 Q: That's what Mr. Erickson said to Mr.  
21 Johnson. Is that your understanding?

22 A: That was my understanding.

23 Q: Okay. How did you learn about that?

24 A: I don't remember if Mr. Johnson told  
25 me or somebody else. I'm not sure.



SHEET 5 PAGE 17

1 Q: Okay, and what did you do after you  
2 heard that?

3 A: I'm not quite sure what happened. I  
4 don't know all the sequence of events that  
5 happened at that particular time.

6 Q: Okay. Maybe what we can do is I'll  
7 give you a document that can maybe help us  
8 work through some of this. I'm going to hand  
9 you a document that is marked as exhibit  
10 thirteen. Why don't you go ahead and take a  
11 few moments and review that document. Have  
12 you ever seen that document before?

13 A: I don't remember if I've seen it or  
14 not. I don't remember.

15 Q: Okay, have you ever seen anything in  
16 writing from Mr. Johnson describing or  
17 outlining some of the events that have  
18 occurred over this period of time?

19 A: His report of contact.

20 Q: Okay, now this references on October  
21 14, 1999, that Mr. Johnson met you near EMS  
22 Office, and inquired, you know, what forms  
23 were needed to make a complaint on a fellow  
24 employee. Do you recall that occurring?

25 A: Yes, cause I did tell him to get

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1 the form the question, you said what to do  
2 between 7:30 and 1:30, and the witness hasn't  
3 said that those are necessarily the exact  
4 times.

5 ANDY OSTROWSKI: Okay. Well let me  
6 ask you, you recall there being a period of  
7 time, from the point at which Mr. Johnson  
8 first talked to you about the matter until  
9 you got back to him about needing a point of  
10 contact form, correct?

11 RODNEY KISCADDEN: Yes.

12 Q: Okay. What did you do after Mr.  
13 Johnson contacted you until the time where  
14 you got back with him?

15 A: Contacted personnel.

16 Q: Okay, and who in personnel did you  
17 speak with?

18 A: Tony Augustine.

19 Q: Tony Augustine?

20 A: Yes he's my personnel, well EMS's  
21 personnel specialist.

22 Q: Okay, and what did you tell Mr.  
23 Augustine?

24 A: That Mr. Johnson had complaint to  
25 write up.

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1 point of contact or.

2 Q: Okay. Did you have to check when  
3 someone as to what needed to be done?  
4 Because this has two different times 7:30 AM,  
5 you made inquiry, and at 1:30, you informed  
6 him that he would need a point of contact  
7 form.

8 A: Right, that is correct.

9 Q: Okay. What did you do, let me ask  
10 you first, as of the time Mr. Johnson came to  
11 you on that date, had you known anything  
12 about what was alleged to have occurred,  
13 between Mr. Johnson and Mr. Erickson?

14 A: I don't remember.

15 Q: Okay, and then what did you do from  
16 7:30 until 1:30? Not everything you did, but  
17 with respect to Mr. Johnson's contacting you.

18 KATE MERSHIMER: I want to object  
19 to form a question, and let me just explain,  
20 put something on the record. We haven't  
21 identified what exhibit thirteen is, but I  
22 take it that it is a typed statement that was  
23 prepared by Mr. Johnson himself.

24 ANDY OSTROWSKI: Correct.

25 KATE MERSHIMER: When I said, I object to

PAGE 20

1 Q: Okay, did you know, did Mr. Johnson  
2 tell you what the complaint was about?

3 A: I don't remember.

4 Q: Okay, do you remember whether you  
5 asked him what the complaint was about?

6 A: No, I don't remember.

7 Q: What all did you talk to Mr.  
8 Augustine about?

9 A: Just what form to put the complaint  
10 on?

11 Q: Okay, you asked him a question he  
12 answered the question, and that was it?

13 A: Yes. Correct.

14 Q: Okay, and did you have any  
15 conversations with Mr. Kent, Raymar Kent.

16 A: None that I remember.

17 Q: If I suggest to you that, were you  
18 aware that he was here for deposition this  
19 morning?

20 A: I knew he was coming.

21 Q: During his deposition, we talked, he  
22 testified, he recalled having two  
23 conversations with you about matters between  
24 Mr. Erickson and Mr. Johnson. Having  
25 suggested that to you, does that refresh your

SHEET 6 PAGE 21

1 recollection or anything?

2 A: No, it doesn't.

3 Q: Okay, do recall having any  
4 conversation with him about Mr. Johnson and  
5 Mr. Erickson?

6 A: No, and I don't want to guess because  
7 I recall Tony Augustine first.

8 Q: Okay, did you, other than that  
9 conversation with Mr. Augustine about what  
10 form to fill out, did you have any other  
11 conversations with Mr. Augustine, about  
12 matters occurring with Mr. Johnson and Mr.  
13 Erickson?

14 A: No.

15 Q: Did you have any conversations with  
16 anybody from human resources other than Mr.  
17 Augustine concerning matters that occurred  
18 between Mr. Erickson and Mr. Johnson?

19 A: No.

20 Q: And do you recall from whom you  
21 learned the facts about what we alleged to  
22 have happened on that day?

23 A: No, I know Mr. Johnson talked to me,  
24 but I don't remember exactly all the things  
25 that he said to me.

PAGE 22

1 Q: Okay, now when do you remember Mr.  
2 Johnson talking to you?

3 A: When he asked me for the form. I  
4 mean, when he asked me what he has to do to  
5 lodge a complaint.

6 Q: Okay, tell me as much as you can  
7 recall, about what Mr. Johnson said to you,  
8 about what happened.

9 A: That's, that I don't remember.

10 Q: Okay, did he, how many, strike that,  
11 was there more than one time, strike that  
12 too, the next entry, Friday October 15, 1999,  
13 indicates that Johnson met with you in EMS  
14 office. Do you recall their being subsequent,  
15 after the time, the first time when Mr.  
16 Johnson asked you what form he needed to fill  
17 out, do you recall their being a subsequent  
18 conversation between you and he, regarding  
19 the facts of what happened?

20 A: I remember him giving me the rough  
21 draft to be typed.

22 Q: Okay, and do, did you have an  
23 understanding at that time, what the nature  
24 of the complaint was?

25 A: No.

PAGE 23

1 Q: Did you know that involved Irvan  
2 Erickson?

3 A: Yes.

4 Q: Okay, so as of that Friday, October  
5 15, 1999, did you not know what had what had  
6 occurred between Mr. Erickson and Mr.  
7 Johnson, what was alleged to have occurred  
8 between them.

9 A: I don't remember if I knew  
10 everything.

11 Q: Okay, tell me what you did know.

12 A: I couldn't really say exactly  
13 everything I did know at that time.

14 Q: Okay. Just tell me as much as you  
15 can about what you did know. Understanding  
16 that you don't recall exactly what you knew.

17 A: That would be hard at this point, to  
18 know exactly what I knew at that point.

19 Q: Right, I'm not asking you tell me  
20 everything exactly what you knew. Just tell  
21 me, tell me as much as you can about what you  
22 knew at that point. Do you understand, I am  
23 asking you two different things? I understand  
24 your answer already is that, you know, it's  
25 hard for you to remember or, you don't

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1 exactly recall everything, but I am asking  
2 you to just sit here and tell me as much as  
3 you can about what you recall. Well if it's  
4 about such and such, and so and so.

5 A: I don't remember how much I knew.

6 Q: Okay.

7 A: Because, it went over such a period  
8 of time, I don't know how much I knew at that  
9 particular time.

10 Q: What, what do you mean over such a  
11 period of time, do you mean from then until  
12 today?

13 A: From then until the next, when Mr.  
14 Johnson came back.

15 Q: Okay.

16 A: Because it was a weekend in between  
17 there.

18 Q: Okay, maybe I can ask you this way, I  
19 am sorry; I'm just trying to get it down as  
20 specifically as I can. So I am going to ask  
21 you what sounds like a lot of the same  
22 questions, but I'm just trying to pin things  
23 down. As of that weekend, how much did you  
24 know about what went on?

25 A: That is the part I don't remember.

SHEET 7 PAGE 25

1 Q: Okay, after you found out what had  
 2 happened, or what was alleged to have  
 3 happened, what did you do next?  
 4 A: Talked to Carol McGuigan and tried to  
 5 get all the facts together.  
 6 Q: Okay.  
 7 A: So that we can present them to  
 8 personnel.  
 9 Q: Okay, and what did you tell Miss  
 10 McGuigan when you talked to her?  
 11 A: I'm not, that there was a complaint  
 12 by Mr. Johnson. I don't know if I went into  
 13 anything specific.  
 14 Q: Okay, and what did she say?  
 15 A: To try to find out the facts and get  
 16 them to the personnel specialist.  
 17 Q: Okay. Did you understand at the time  
 18 at which you first spoke with Miss McGuigan  
 19 about what was going on, that Mr. Johnson was  
 20 offended, or upset by what Mr. Erickson had  
 21 said to him?  
 22 A: I would say he was upset, yes.  
 23 Q: Okay, did you tell you he was upset  
 24 or were you reading his body language?  
 25 A: Not sure which way it was.

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1 Q: And when Mr. Johnson asked you, or  
 2 told to that he wanted to make a complaint on  
 3 a fellow employee, did you know what employee  
 4 he wanted to make a complaint on?  
 5 A: Yes, he told me, Mr. Erickson.  
 6 Q: Okay, as of the time, as of the time  
 7 he spoke with Ms. McGuigan, had Mr. Johnson,  
 8 did that occur after you've seen the rough  
 9 draft of what he, what his complaint was?  
 10 A: I don't remember.  
 11 Q: Okay, is there any documents that you  
 12 are aware of that I could try to show you to  
 13 help you refresh your recollection of what  
 14 went on, back in this period of time, did you  
 15 ever prepare anything in writing?  
 16 A: No, I didn't. No.  
 17 Q: Okay, do you recall there being any  
 18 other documents that record information about  
 19 these matters that you could review to  
 20 refresh your recollection about any of this  
 21 stuff?  
 22 A: No.  
 23 Q: So, I'm stuck with what you remember  
 24 today, fair enough. Okay, after you had your  
 25 conversation with Ms. McGuigan what did you

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1 do next?  
 2 A: Gave the information to the personnel  
 3 specialist to find out what action to take  
 4 against Mr. Erickson.  
 5 Q: Okay, what information did you give  
 6 to the personnel specialist?  
 7 A: The comment that was made, the  
 8 alleged comment that was made against Mr.  
 9 Johnson.  
 10 Q: Okay, at that time he went to the  
 11 personnel specialist, had you spoken with Mr.  
 12 Erickson about what had occurred?  
 13 A: I don't remember.  
 14 Q: And after you gave the information to  
 15 the personnel specialist, what happened next?  
 16 A: Talked to Ms. McGuigan, we decided on  
 17 a counsel.  
 18 Q: Okay, did you have any, when you gave  
 19 it to the, when you gave it to personnel  
 20 specialist, did you have any discussions with  
 21 the personnel specialist, was that Mr.  
 22 Augustine? Was it him again?  
 23 A: Yes, I believe so.  
 24 Q: Okay, what did you and he discuss?  
 25 A: For the, the alleged comment, and

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1 that was about all I remember at that  
 2 particular time. He said that counseling, and  
 3 that we were supposed to include in the  
 4 counseling, that Mr. Erickson should stay  
 5 away from Mr. Johnson.  
 6 Q: Okay, and then you said that after  
 7 you spoke with Mr. Augustine. is his name  
 8 Augustine?  
 9 A: Yes.  
 10 Q: Okay, after he spoke with Mr.  
 11 Augustine you had another conversation with  
 12 Ms. McGuigan, is that correct?  
 13 A: Yes.  
 14 Q: Okay, and what did you and she  
 15 discuss?  
 16 A: What I found out in personnel.  
 17 Q: Okay, and.  
 18 A: That was to right of the counseling.  
 19 Remember.  
 20 Q: What did she say?  
 21 A: Go ahead.  
 22 Q: Okay. Why did you go to Ms. McGuigan  
 23 about it?  
 24 A: She's my boss.  
 25 Q: Did you need to do that in your

SHEET 8 PAGE 29

1 understanding of this process?

2 A: Yes, I like to always to keep my  
3 supervisor informed of what's going on.

4 Q: Okay, and then after you spoke with  
5 Ms. McGuigan, what did you do next?

6 A: wrote up the counsel.

7 Q: And then what?

8 A: Presented it, well Ms. McGuigan and I  
9 presented it to Mr. Erickson.

10 Q: And how did that come about? Did he  
11 come into one of your offices?

12 A: That part is, I don't remember how  
13 that was handled.

14 Q: Okay

15 A: Or when.

16 Q: How, after you wrote up the  
17 counseling, how long after that did you  
18 actually talk to Erickson?

19 A: I don't remember.

20 Q: Okay. Over on the second page of that  
21 document, on the first entry down to the  
22 second paragraph, where it has 10:45 AM, it  
23 says, Johnson met with the McGuigan, and  
24 explained everything that occurred with  
25 Erickson from October 13, 1999, after that

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1 point McGuigan summoned Kiscadden into her  
2 office, and Kiscadden confirmed previous  
3 complaints from Johnson regarding Erickson.  
4 Do recall meeting with Mr. Johnson and Ms.  
5 McGuigan, at some point?

6 A: At this particular time, I don't  
7 remember it.

8 Q: Okay. And reading that doesn't help  
9 you with your, refresh your recollection.

10 A: No, it doesn't.

11 Q: Okay, now did you, the paragraph  
12 above that explains, and I'll summarize it  
13 for you, I mean you're free to review it,  
14 because I don't want to misstate anything in  
15 it, but it essentially explains the situation  
16 that Erickson got word that Louis Johnson was  
17 going to write him up, do a complaint on him  
18 or something, and approached him in front of  
19 a nurse's station, and started kind of  
20 shoving him with his shoulder, that's my  
21 summary of it, whatever that says is what it  
22 says. Are you aware of that having been an  
23 allegation made by Mr. Johnson?

24 A: I had heard this, yes. Yes, I did.

25 Q: Okay, and did you, at the time you

PAGE 31

1 heard that, you were already aware of the  
2 remark that was alleged to have been made by  
3 Mr. Erickson?

4 A: That's correct

5 Q: And did you separately speak with Ms.  
6 McGuigan about both matters?

7 A: I don't remember.

8 Q: Okay, and what did you do after you  
9 heard about, strike that, how did you hear  
10 about the second incident? The shoving  
11 incident, is what I'll call it.

12 A: That I don't remember, how I found  
13 out.

14 Q: When we talked about you doing your  
15 fact finding, I don't know if that's what we  
16 termed it, but you contacted Mr. Augustine,  
17 and he said something about a counseling  
18 would be appropriate. Was that before you  
19 knew about the shoving incident and after  
20 the, you knew about the remark, or was it  
21 after both of them?

22 A: I don't remember when those  
23 incidences occurred.

24 Q: Okay, what about, when did you  
25 writing up the counseling occur in relation

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1 to those instances? Did it happen between  
2 them or after both of them?

3 A: I don't remember.

4 Q: Okay, after you learned about the  
5 shoving incident, what did you do?

6 A: I don't remember.

7 Q: I think I already asked but make  
8 clear. Do you remember from whom you learned  
9 about the shoving incident?

10 A: No

11 Q: I kind of have, I look like I have a  
12 smirk on my face, I don't want to interpret  
13 me laughing at you or anything, it just was  
14 laughing, it's kind of a difficult when, not  
15 recall anything, it makes my job harder, but.

16 A: Yes. I understand.

17 Q: I'm not asking you change your  
18 responses, as long as those are the honest  
19 responses. On the next entry, Tuesday October  
20 19, 1999, it indicates in that first  
21 paragraph, that you had stated to Barbara  
22 Yeich, Y-E-I-C-H, you had asked her, whose  
23 side are you taking? See that, in the first  
24 paragraph, in the last sentence. Yeich went  
25 on to explain to Johnson that she was



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1 extremely upset due to a conversation she had  
2 with Kiskadden. Yeich stated the first thing  
3 as her by Kiskadden was " so whose side are  
4 you taking?"

5 A: Okay.

6 Q: Okay.

7 A: That has to do with, I was supposed  
8 to go over and fact find for Ms. Yeich about  
9 an alleged incident.

10 Q: Okay.

11 A: What she quoted there, I don't  
12 remember saying that.

13 Q: Okay.

14 A: I don't know why I would've said  
15 that.

16 Q: Okay, when you say, you were supposed  
17 to be fact finding, did someone instruct you  
18 on what to do or who to talk to?

19 A: I don't remember if it was, I don't  
20 remember who instructed me, but I'd say  
21 Carolyn McWade.

22 Q: Okay, and after you learned about the  
23 alleged shoving incident, what did you,  
24 strike that, when you did next talked to Mr.  
25 Erickson after you learn about the alleged

PAGE 35

1 were involved?

2 A: Yes, I did no fact- finding.

3 Q: Okay, why hadn't done any fact-  
4 finding?

5 A: I wasn't instructed to.

6 Q: Okay, but it talked about the matter  
7 with Ms. Mcquigan?

8 A: Yes.

9 Q: And with personnel?

10 A: Yes.

11 Q: And did not do any fact finding then  
12 until after you learned that the police were  
13 investigating the matter?

14 A: Yes.

15 Q: The entry at the bottom of the page,  
16 Wednesday, October 20 of 1999, indicates that  
17 you had, that Mr. Johnson had come to you  
18 concerned that he and Mr. Erickson were  
19 assigned to the same building, do recall that  
20 happening?

21 A: Yes.

22 Q: Okay, and tell you a recall about  
23 that.

24 A: I believe since Mr. Johnson coming to  
25 work at 7:45, he had been assigned to the

PAGE 34

1 shoving incident?

2 A: I don't remember.

3 Q: Did you talk to any other EMS  
4 supervisors, about what was going on between  
5 Mr. Erickson and Mr. Johnson?

6 A: No

7 Q: Okay, when you spoke to Ms. Yeich,  
8 did you get a written statement from her?

9 A: No.

10 Q: Is there any reason why he didn't get  
11 a written statement from her?

12 A: Because I knew that police were  
13 already involved.

14 Q: When you do, how did you, strike  
15 that, when did you become aware that the  
16 police were involved?

17 A: That I don't remember.

18 Q: Okay, how did you become aware that  
19 police were involved?

20 A: Carolyn told me.

21 Q: Okay, up until that time that the  
22 police became involved, what is everything  
23 you had done in your fact-finding process?

24 A: Before that I didn't do anything.

25 Q: Before you learned that the police

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1 ICU, which is an 8:00 to 4:30 position. So he  
2 would have previously known to come in at  
3 that particular time.

4 Q: Okay,

5 A: And that's a priority, what would you  
6 say, a priority position where it needed to  
7 be filled ahead of time, so he would have  
8 been assigned there, and that's why he would  
9 have been in building one.

10 Q: Okay, do you recall him coming to you  
11 and being concerned about being assigned to  
12 that unit, that building?

13 A: Yes.

14 Q: Okay, and what you recall the basis  
15 of his concern being?

16 A: Because Mr. Erickson was working in  
17 the same building.

18 Q: Okay, and did Mr. Johnson indicate  
19 you that he felt sick and that he wouldn't be  
20 able to work?

21 A: I don't think that occurred right  
22 away.

23 Q: Okay, when, did that at some point  
24 occur?

25 A: Yes, I'm not sure; I don't remember

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1 how the events transpired.

2 Q: But, you did have a conversation with  
3 Mr. Johnson where he indicated he was feeling  
4 ill and wanted to go home?

5 A: Yes.

6 Q: And did he communicate the basis for  
7 his ill feeling as his having to work in the  
8 vicinity of Mr. Erickson?

9 A: That is correct.

10 Q: Did you make, did you observed Mr.  
11 Johnson, did he look like he didn't feel  
12 well?

13 A: I'm not sure.

14 Q: Okay, when you say you're not sure,  
15 is there's something about, because a lot of  
16 your questions, a lot of your responses you  
17 haven't recalled, this time he said you're  
18 not sure. Is there something you observed  
19 about him, but not sure if you look sick or.

20 A: He was just, what's the word,  
21 concerned.

22 Q: Okay, and then Mr. Johnson says, I'm  
23 reading at the bottom, Kiscadden stated to  
24 Johnson, sit and calm down and I'll go and  
25 talk to the chief about you going home on

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1 became involved?

2 KATE MERSHIMER: Object to the form of  
3 the question.

4 ANDY OSTROWSKI: You can still answer.

5 KATE MERSHIMER: Yes, go ahead and  
6 answer.

7 RODNEY KISCADDEN: Oh. As far as my  
8 recollection, I would.

9 ANDY OSTROWSKI: Okay, that would be  
10 correct?

11 A: That will be correct, sorry.

12 Q: As of that day, when Mr. Johnson  
13 wanted to go home sick, what all had you talk  
14 to Mr. Johnson about concerning his  
15 interactions or involvement with Mr.  
16 Erickson?

17 A: I don't remember everything that I  
18 would have said.

19 Q: Did you understand, did you have any  
20 understanding as to whether Mr. Johnson was  
21 concerned for his own personal safety?

22 A: Not sure he relayed the information  
23 to me or not.

24 Q: Okay.

25 A: I know he was concerned about being

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1 sick leave. Did you recall having that  
2 discussion with Mr. Johnson?

3 A: Yes.

4 Q: And who is the chief, is that Ms.  
5 Mcguigan?

6 A: Yes.

7 Q: And then the, I'm on the third page,  
8 it says, the second full sentence on that  
9 page, Kiscadden returned and told Johnson it  
10 was okay for him to go home on sick leave but  
11 they wanted to talk to him first. Is that  
12 accurate?

13 A: Yes.

14 Q: And who is the day, who wanted to  
15 talk to Mr. Johnson before he left that day?

16 A: Carolyn and myself.

17 Q: What did you want to talk to him  
18 about?

19 A: I'm not sure.

20 Q: Okay, and it also indicates on that  
21 day, Wednesday, October 20, 1999, that the  
22 police became involved on that day. Is that  
23 consistent with your recollection, the day  
24 that Mr. Johnson felt sick and wanted to go  
25 home, that's a day when the police also

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1 in the same building with Mr. Erickson.

2 Q: Okay, and, had Mr. Johnson come to  
3 you on previous occasions about Mr. Erickson  
4 harassing him?

5 A: That I don't remember.

6 Q: I'll just suggest something, do he  
7 ever come to you and complain about Mr.  
8 Erickson chastising him for the way he  
9 performed his work or anything of that  
10 nature?

11 A: There was one time that I remember  
12 that may have suggested that it didn't seem  
13 that his waxing was up to standards.

14 Q: Okay, and Mr. Johnson reported that  
15 you?

16 A: Yes.

17 Q: Do you know when in relation to these  
18 incidents that was?

19 A: No.

20 Q: was it before these matters?

21 A: Yes.

22 Q: What number did I put on that one?

23 KATE MARSHER: 13

24 ANDY OSTROWSKI: I'm going to hand you a  
25 document marked as exhibit fourteen. Is this

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1 a document that you prepared?  
 2 RODNEY KISKADDEN: Yes.  
 3 Q: Okay, and does Counseling, October  
 4 20, 1999, and I won't read the content of it.  
 5 At the bottom of this document, it has the  
 6 name, looks like Irvan Erickson's signature,  
 7 is that; do you recognize that as being his  
 8 signature?  
 9 A: Yes.  
 10 Q: Okay, were you in his presence when  
 11 he signed this?  
 12 A: Yes.  
 13 Q: Okay, and he dated it, November 15,  
 14 1999. You know why it was dated November 15,  
 15 1999?  
 16 A: No, I don't.  
 17 Q: When you do present him with this  
 18 document?  
 19 A: That I don't remember. It should've  
 20 been October 20th.  
 21 Q: It should have been October 20th,  
 22 when you presented it to him?  
 23 A: Yes.  
 24 Q: Okay, is that your recollection, or  
 25 is that just based on, it says counseling

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1 October 20, 1999.  
 2 A: It's what I; it should have be given  
 3 to him, yes.  
 4 Q: Okay, and what did you do with this  
 5 document after you received, after Mr.  
 6 Erickson signed it?  
 7 A: I don't remember what.  
 8 Q: Okay, there is a facsimile script at  
 9 the top of that. Do you see that? It says  
 10 November 15, 1999, Monday 14:00, page two. Do  
 11 you recognize what fax machine that came  
 12 from?  
 13 A: No.  
 14 Q: I'm going to hand you a document  
 15 marked as exhibit fifteen. The report of  
 16 contact, is that your signature at the bottom  
 17 of the page?  
 18 A: Yes.  
 19 Q: And it's dated October 18, 1999. Is  
 20 this a document you prepared?  
 21 A: Yes it would have been.  
 22 Q: Okay, now what is the purpose or use  
 23 of this form of document? I mean, why did  
 24 you fill this out and what did you use this  
 25 for?

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1 A: This just would have been a fact  
 2 finding.  
 3 Q: Okay, and you did then meet with Mr.  
 4 Erickson on October 18th?  
 5 A: Yes.  
 6 Q: Okay, and what did you do with this  
 7 document after you prepared it?  
 8 A: Just kept it on file.  
 9 Q: Okay. For what purpose?  
 10 A: So I had a copy of it.  
 11 Q: Okay. What did you, other than,  
 12 other than what's recorded here, is there  
 13 anything more that you talked to Mr. Erickson  
 14 about at that time?  
 15 A: No, these are the only incidences  
 16 that he related to me.  
 17 Q: He being?  
 18 A: Mr. Erickson.  
 19 Q: Okay, I'm going to hand you a  
 20 document marked as exhibit sixteen. Is that  
 21 your copy of your signature that appears at  
 22 the bottom, even though it's a little hard to  
 23 read?  
 24 A: Yes that's my signature.  
 25 Q: Okay and is this a document that you

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1 prepared and sent Mr. Johnson?  
 2 A: Yes.  
 3 Q: Why did you prepare this document on  
 4 November 17th, or send this on November 17,  
 5 1999?  
 6 A: This would have been a document  
 7 instructed to be, by the personnel.  
 8 Q: Okay. The line in there, we are  
 9 confident that you can return to work without  
 10 any concerns. Why did you put that in there?  
 11 A: Because we were confident he could  
 12 return to work.  
 13 Q: Did he express some concerns about  
 14 not be able to return to work?  
 15 A: By that time he was off work so I  
 16 would imagine he would have had some  
 17 concerns, yes.  
 18 Q: Okay, and what had been done to, what  
 19 action had been taken to sure that whatever  
 20 he was concerned about would not be repeated?  
 21 A: The counseling to Mr. Erickson.  
 22 Q: Okay. Is it possible that the  
 23 counseling form exhibit number thirteen?  
 24 A: Fourteen.  
 25 Q: Fourteen, correct, sorry. Did you

SHEET 12 PAGE 45

1 prepare that several weeks after the  
2 incident?

3 A: Did I prepare this counseling.

4 Q: The form, several weeks after the  
5 incident?

6 A: I would've prepared it on the date  
7 specified.

8 Q: Well there's two.

9 A: And why Mr., I can't tell you why  
10 this is dated by Mr. Erickson, that  
11 particular date. That I don't know

12 Q: Okay. Is it possible, and I'm going  
13 to suggest something, I'll let you respond to  
14 it, that you didn't do anything, and then you  
15 were concerned because Mr. Johnson was  
16 concerned, and you got together with McGuigan  
17 and thought you better make it look like you  
18 did something to correct the situation, well  
19 after the fact.

20 A: No I wouldn't bend on policy.

21 Q: Okay, on these documents, I mean,  
22 looks like you contacted Mr. Erickson on the  
23 eighteenth of October, based upon exhibit  
24 number fifteen.

25 A: Yes.

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1 Q: Okay, and why would that change the  
2 scenario?

3 A: That would be automatic  
4 dismissal.

5 Q: Okay. Based upon what, the severity  
6 of the incident?

7 A: Yes.

8 Q: Now who makes that determination as  
9 to what incidence are or how severe any  
10 particular incident is?

11 A: We present those to personnel.

12 Q: Okay.

13 A: They let us know how great the  
14 severity of procedure were supposed to use.

15 Q: Okay.

16 A: But I also believe the union can get  
17 involved, also.

18 Q: Okay. A document marked as exhibit  
19 seventeen. That again, your signature that  
20 appears on that document?

21 A: Yes.

22 Q: Now why on, why was this document  
23 prepared?

24 A: I'm not sure who prepared this. You  
25 mean this document?

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1 Q: And then you prepared a counseling  
2 for him on October 20th.

3 A: Yes.

4 Q: Did you talk to Mr. Erickson at all  
5 before there were two instances, meaning  
6 did you talk to him after just a matter of  
7 the comment that he made?

8 A: No.

9 Q: Okay. It was only after there was  
10 the alleged shoving incident involved, then  
11 you talked about both.

12 A: That's correct.

13 Q: Okay. And when you use the term  
14 counseling, what do you mean by counseling?

15 A: That's the form of, what could you  
16 say, price of the disciplinary action,  
17 counseling would be the first thing you do.

18 Q: Okay. Is that the first thing you do  
19 in any case?

20 A: Not always.

21 Q: Okay, like would have been a  
22 different situation if Mr. Erickson came up  
23 and punched Louis Johnson in the mouth?

24 A: Definitely would have changed the  
25 scenario.

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1 Q: Yes.

2 A: I don't know.

3 Q: In the designation N137, after your  
4 name, what is tat reference to? That your  
5 position?

6 A: Position?

7 Q: N137.

8 A: Oh there, that is mail code.

9 Q: Okay, for your specific mailbox.

10 A: EMS.

11 Q: Okay. And N21, is that just human  
12 resource office?

13 A: Yes, that would be human resources  
14 mail code.

15 Q: Okay, and again can you, do you have  
16 any explanation as to why, after two months,  
17 this is a document that you prepared?

18 KATE MERSHIMER: I want to object  
19 to the form the question because I think he  
20 said, and I might be wrong, that he didn't  
21 prepare it, perhaps I'm wrong.

22 ANDY OSTROWSKI: Okay. I thought he  
23 corrected himself. Did you prepare this  
24 document?



SHEET 13 PAGE 49

1 RODNEY KISKADDEN: That I don't  
2 remember, I don't remember this document.

3 Q: Okay, do you have any idea as to  
4 what was going on two months after the  
5 incidents that led you to prepare this  
6 document, or that led you to sign this  
7 document, anyway?

8 A: Yes, I don't remember this document,  
9 even though I did sign it. I don't remember  
10 it.

11 Q: Okay. There was a statement in one of  
12 the investigation reports that I wanted to  
13 just ask you about briefly. I think it was  
14 in one of the EEO investigation reports and  
15 if I don't find the specific reference, I'll  
16 just ask you generally. There was a comment  
17 to the effect that, you had in the past,  
18 determined that Mr. Johnson was a little  
19 hyper sensitive, is, I think, the word used.  
20 Did you ever give that information to  
21 anybody?

22 A: Not in my recollection.

23 Q: Okay, this is in, it's in, I'll show  
24 it to you, I'm not the mark it, EEO  
25 counselors report, I don't need to read all

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1 tag people with any, because I'm not a  
2 doctor, I'm not, I'm just a supervisor and.

3 Q: Okay.

4 A: people do get hyperactive over  
5 situations, whether I would say that about a  
6 person, no.

7 Q: Okay, is there any chance that you  
8 did you didn't do certain things, you didn't  
9 take more prompt, or firm action concerning  
10 what Mr. Erickson had done, because you  
11 thought that Mr. Johnson might be over doing  
12 it with what he was saying about the matter.

13 A: Well we went to personnel to find  
14 out, you know, how strenuous the severity of  
15 punishment, and that's the greatest  
16 punishment, they say, do the counseling.

17 Q: Okay, and did you go to human  
18 resources after each of the incidents or just  
19 after both of them?

20 A: I don't remember. I don't know if it  
21 was after one or both.

22 Q: Okay, but there was only one  
23 counseling of Mr. Erickson.

24 A: Yes. One counseling.

25 Q: And that was based on both incidents.

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1 the information in, but it does say Mr.  
2 Kiskadden said that Mr. Johnson gets a little  
3 hyperactive at times and he did not feel that  
4 Mr. Erickson's behavior warranted  
5 termination. It's right at the bottom of  
6 that page.

7 A: was that a phone conversation?

8 Q: I don't know, think you said that you  
9 don't recall ever saying that, correct, or do  
10 you, after looking at that.

11 A: Yes I don't remember how this  
12 would've been.

13 KATE MERSHIMER: Can I see the document,  
14 please.

15 ANDY OSTROWSKI: Yes sure, but do you  
16 recall ever saying anything like that to  
17 anybody. That Mr. Johnson gets a little  
18 hyperactive.

19 RODNEY KISKADDEN: No, I don't remember  
20 saying that.

21 Q: Okay, do you recall, did you ever  
22 have that thought, that you thought Louis  
23 Johnson might be a little hyperactive or over  
24 reactive to situations?

25 A: No, because I don't try to, you know,

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1 A: Yes.

2 Q: Okay. Do you recall in summer of  
3 1998, when Mr. Johnson applied for  
4 housekeeping vacancy that was over in, I  
5 think it was in acute care, and he wasn't  
6 given a position, do you have recollection of  
7 those matters?

8 A: Yes I remember the incident.

9 Q: Okay. Was there a practice in place,  
10 that you are aware of, that if there was a  
11 vacancy open in a position, at the same  
12 grade, hat persons within that position, it  
13 was first offered to persons in that position  
14 informally, to see if they wanted to take a  
15 reassignment, or a change of status, to move  
16 into an open position?

17 A: At that particular time, the decision  
18 to hire people on certain wards was done by  
19 the ward people, because they were not part  
20 of our service anymore.

21 Q: Okay. But are you aware of that  
22 practice, like if there was a housekeeping  
23 vacancy in EMS before it was posted and  
24 announced generally, would other housekeepers  
25 have been able to, you know, bid into that

SHEET 14 PAGE 53

1 position, without having to go through the  
2 normal promotion, or reassignment, or  
3 application process?

4 A: Yes if we handle. Okay, I'll  
5 explain, if there is an opening for a certain  
6 area because somebody retired, like in a  
7 certain building, a certain ward, we post it  
8 within our department, senior person gets the  
9 area.

10 Q: Okay. And is that still a practice?

11 A: It is now. When we were divided, when  
12 a position opened up, it would be the  
13 decision of manager of that department.

14 Q: To, as to how to fill the position?

15 A: Yes that's correct.

16 Q: Okay. Are you aware of situations in  
17 other departments, where housekeeping  
18 vacancies had been created either through  
19 either a retirement, I think was the example  
20 that you used, and the positions were filled  
21 by opening up to other housekeepers, to take  
22 the position before it was formally posted.  
23 Has that happened in other units?

24 A: Oh yes.

25 Q: Okay. And in those situations it's,

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1 Q: Okay. Well do you keep forms in your  
2 office?

3 A: No, he would get them from personnel.

4 Q: Do you recall having any discussions  
5 with Louis Johnson about his workers  
6 compensation claim?

7 A: Not that I can remember.

8 Q: Did you have any conversations with  
9 Joseph Stucky about Mr. Johnson's worker's  
10 compensation claim?

11 A: If he filed for a worker's  
12 compensation claim, there probably was a part  
13 in there that I was supposed to fill out.

14 Q: Okay. Do you recall ever filling one  
15 out?

16 A: At this particular time I don't  
17 recall it.

18 Q: Okay. I'm going to give you a copy  
19 of a document marked as exhibit eighteen.  
20 This, on the second page of this document,  
21 does it bare your signature?

22 A: Yes.

23 Q: Okay. Did you prepare this form?

24 A: This is a form that, it's probably in  
25 the computer.

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1 before it's formally posted, the housekeepers  
2 who are allowed to fill those positions, it's  
3 filled on the basis of seniority?

4 A: that's correct.

5 Q: And has that practice ever changed?

6 A: No.

7 Q: Do recall their being an a wall given  
8 to Louis Johnson in August 1998?

9 A: Yes I remember an a wall was given to  
10 him.

11 Q: And how did that come about?

12 A: I don't know I wasn't involved.

13 Q: Okay. Do you know who was involved in  
14 that?

15 A: Not sure at this time, no.

16 Q: Okay. Did you having the discussions  
17 with Louis around that time about him having  
18 scheduled leave and then canceling it, and  
19 there was something in that process that led  
20 to this whole a wall situation?

21 A: I don't remember.

22 Q: Okay. What is your role as supervisor  
23 in EMS, in the processing of an employees  
24 worker's compensation claim?

25 A: I don't know that I have really any.

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1 Q: Okay, but there's some handwritten  
2 information, and some x's in boxes, and some  
3 blanks that were filled in. Did you fill any  
4 of this information out?

5 A: That would have been the supervisors  
6 report, yes.

7 Q: Okay. So this is something that was  
8 prepared by you?

9 A: Yes, because it's, yes, it's a  
10 supervisor's report, so I would have had to  
11 fill this report out.

12 Q: Okay, and do you know if you prepared  
13 a narrative of the incident, or the basis of  
14 the report?

15 A: No, I would, I would've just filled  
16 this out.

17 Q: Okay.

18 A: I don't know about a narrative.

19 Q: Okay. Let me take a couple minute  
20 break here, and will probably wrap up pretty  
21 quick.

22 CRYSTAL LYDE: 2:34 PM, will take a  
23 short break.

24 It's 2:43 PM. We're back on video, audio,  
25 and record.

SHEET 15 PAGE 57

1 ANDY OSTROWSKI: Okay, I'm just a show  
 2 you, I didn't make copies because it's rather  
 3 lengthy, identify them in terms of numbers,  
 4 as were assigned by your attorneys, 0G-01712  
 5 thru, did I say 0712, thru 0740, and I'm only  
 6 going to ask you about 0712 thru 0716.  
 7 That's a form that's a completed CA2, and on  
 8 the second page of that 0713, is that you are  
 9 signature again?  
 10 RODNEY KISKADDEN: Yes.  
 11 Q: Okay, and then if you just flip  
 12 through, because above your signature there's  
 13 a line where you're requested to verify  
 14 certain information, and then you say, see  
 15 attached. Do you see that?  
 16 A: Yes.  
 17 Q: Okay. Can you tell me if the  
 18 information following the form is what was  
 19 submitted? If you recall.  
 20 A: To the best of my knowledge.  
 21 Q: Okay. That's all the questions I have  
 22 for you. Thank you.  
 23 KATE MERSHIMER: Just a follow up  
 24 question. The form you just looked at, 0712  
 25 thru 0713, did you personally, focusing on

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1 gone through a change, at some point, in  
 2 where the housekeepers were assigned. Is  
 3 that correct?  
 4 A: Yes, the housekeepers were assigned  
 5 to the product lines for a length of time.  
 6 I'm not sure of the length of time at this,  
 7 for a couple years they were assigned with  
 8 the product line.  
 9 Q: Okay. I just want see if I understand  
 10 this. There was a period of time when EMS,  
 11 all the housekeepers were assigned to EMS,  
 12 and they were given certain floors of  
 13 buildings to work in or possibly float  
 14 around. Is that correct?  
 15 A: There was a time when the product  
 16 lines were in charge of their housekeeper and  
 17 we just had the, I don't know how I can say  
 18 this, general areas.  
 19 Q: Okay. I have nothing further.  
 20 ANDY OSTROWSKI: I don't either. Thank  
 21 you, sir.  
 22 RODNEY KISKADDEN: Okay.  
 23 CRYSTAL LYDE: 2:49 PM. The deposition  
 24 with Rodney Kiskadden has concluded. Thank  
 25 you.

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1 page 0713, did you personally complete this  
 2 form? That you recall.  
 3 RODNEY KISKADDEN: Probably this, I was  
 4 probably in presence. I was present at that.  
 5 Q: Would you recall, do you recall, yes  
 6 or no, whether Mr. Stucky, Joseph Stucky  
 7 possibly helped you to prepare this form?  
 8 A: Most likely, yes.  
 9 Q: Is it possible he prepared this form  
 10 and you just reviewed it and signed it?  
 11 A: It's possible; we probably did  
 12 together in an office setting.  
 13 Q: Okay, and how about with exhibit  
 14 eighteen, that second page, you had said that  
 15 you had prepared this form? What I want to  
 16 know is are you sure that you prepared.  
 17 A: With Mr. Stucky, possibly but it is  
 18 unclear to me.  
 19 Q: Okay.  
 20 A: Usually we don't fill these forms out  
 21 without personnel specialist or somebody from  
 22 the office at least assisting us if we're not  
 23 sure of some, make sure we're filling out the  
 24 right forms.  
 25 Q: Okay. Now you had said that EMS had

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EXHIBIT C

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT

Lewis Johnson, :1: CV-01-1873

Plaintiff :

vs. :

Hershel Gober Et.al, :

Defendant :

DATE: April 9, 2002

PROCEEDINGS: Video Deposition of  
Joseph Stuckey, Jr.

APPEARANCES:

For the Plaintiff: Andrew Ostrowski  
4311 N. 6<sup>th</sup> Street  
Harrisburg, PA 17110

For the Defendant: Kate Mershimer  
228 Walnut St., 2<sup>nd</sup> Fl.  
P.O. Box 11754  
Harrisburg, PA 17108

RODRIGUEZ: Good morning ladies

and gentlemen. I'm to advise you that  
the video and audio are in operation.  
Today's date is April 9, 2002. Camera  
time now is 11:39. My name is Albert  
Rodriguez. My address is 4146 Spruce  
Park, Lebanon, PA, 17046. I've been  
hired by the PR Video to take this video  
deposition for the Plaintiff. This case  
is in the United States District Court  
for the Middle District of Pennsylvania.  
It is docketed at 1:CV-00-1873. Caption  
is Lewis Johnson versus Hershel Johnson  
Gober Et.al. The deponnee is Joseph  
Stuckey. Mr. Stuckey, please raise your  
right hand. Do you understand that this  
is a legal proceeding and do you swear to  
truthfully answer the questions asked of  
you?

STUCKEY: Yes, I do.

RODRIGUEZ: Would counsel please  
identify themselves and provide their  
address and phone number for the record.

MERSHIMER: Kate Mershimer,  
Assistant U.S. Attorney for the

2

Harrisburg United States Attorney's  
Office. I think we already have my  
number and address for the record. And  
just technically, the deposition started  
at 11:49am. I understand there's a  
difference with the computer but just  
want it on the record.

STUCKEY: I'm Joseph Stuckey,  
Junior. I'm an employee at the Lebanon  
VA Medical Center in Lebanon,  
Pennsylvania.

McLucas: My name is Gail McLucas  
from the court reporting firm, Filius and  
McLucas.

OSTROWSKI: I'm Andrew Ostrowski,  
attorney for Plaintiff.

JOHNSON: Lewis Johnson,  
Plaintiff.

RODRIGUEZ: Very well, then we'll  
begin.

OSTROWSKI: And, we're going to  
add the reserve...

MERSHIMER: We're going to  
reserve all objections other than the  
form of the question and the witness

reserves the right to, excuse me, read  
and sign.

OSTROWSKI: Mr. Stuckey, my name  
is Andy Ostrowski. We were introduced  
about an hour ago when you first sat down  
here. I apologize for making you wait a  
little bit. We had some problems with  
our copier. You understand you are here  
today to give a deposition in connection  
with the lawsuit that Lewis Johnson has  
brought against the Veteran's  
Administration of People and the people  
associated with the Veteran's  
Administration.

STUCKEY: Yes sir.

Q: Have you give depositions in  
the past?

A: Yes sir.

Q: How are you currently  
employed?

A: I'm a Human Resources  
Specialist at the Lebanon VA Medical  
Center.

Q: And how long have you held

1 A: Approximately five years.

2 Q: Prior to your employment with  
3 the, in the Human Resources Office at the  
4 Veteran's Administration in Lebanon, how  
5 were you employed?

6 A: I was employed by the VA  
7 Medical Center as a cook.

8 Q: And how long total were you  
9 with the VA Medical Center?

10 A: I now have 25 years.

11 Q: And you were a cook for, how  
12 long were you cook for?

13 A: Approximately 20 years.

14 Q: How did you go from being a  
15 cook to working in Human Resources.

16 A: There was an open position  
17 that was posted on the bulletin board and  
18 I put in for the position and I qualified  
19 and was accepted.

20 Q: What were the qualifications  
21 for that position?

22 A: You had to have typing  
23 skills, skills dealing with manuals and  
24 there was a list of qualifications for  
25 the position.

5

1 training did you have prior to starting  
2 with your Human Resources position?

3 A: I have background as a  
4 National Guards person where I was in  
5 management positions, I was a union  
6 representative, a union steward and a  
7 past union president at the facility and  
8 I also had some additional training as,  
9 when I got into my position from the  
10 Department of Labor in Philadelphia.

11 Q: Okay. That was after you got  
12 into your position?

13 A: Yes sir.

14 Q: Well what did that training  
15 involve?

16 A: It was about a week long  
17 course, I think it was like an  
18 introduction to Human Resources, how to  
19 process claims and things like that.

20 Q: When you say how to process  
21 claims, do you mean OWCP claims?

22 A: Yes sir.

23 Q: And is that, has that been a  
24 responsibility of yours since you started  
25 with the Human Resources?

1 Q: Who is your current  
2 supervisor?

3 A: My current supervisor now?

4 Q: Yes.

5 A: Raymer Kent.

6 Q: And how long has Mr. Kent  
7 been your supervisor?

8 A: My immediate supervisor for 5  
9 years.

10 Q: Since, at all times since you  
11 have been in that position?

12 A: Yes, yes sir.

13 Q: So, you started in that  
14 position in 1997, is that correct?

15 A: Yes.

16 Q: And do you have a specific  
17 area of responsibilities?

18 A: Yes I do. I'm responsible  
19 for the Workers' Compensation program,  
20 I'm also responsible for Retirement  
21 Estimates and Counselings, as well as I  
22 handle day-to-day questions concerning  
23 health insurance and benefits, along  
24 those lines.

25 Q: And what orientation or

6

1 A: Yes sir.

2 Q: Okay. Can you just give me  
3 an overall schedule, what's involved in  
4 processing a Workers' Compensation claim?

5 A: Okay, in October of 1998, the  
6 VA Agency went to a paperless form,  
7 electronic filing of the CA-1's and CA-  
8 2's, as well as 7's and 8's. They  
9 weren't, at that point they didn't have  
10 the interface to electronically transmit  
11 them to the department of labor.

12 However, they were using them in the  
13 computer to process them, to complete  
14 them. Part of that process was that the  
15 employee, well actually, the employee is  
16 initially supposed to report to the  
17 Urgent Care Facility for initial  
18 treatment. Once they do that, the  
19 employees down in Urgent Care create what  
20 they call a stub file for the CA-1 or the  
21 CA-2. They ask the employee information,  
22 such as the employee's supervisor, home  
23 address, telephone numbers, things like  
24 that.

25

Q: Who's responsible for that?

1 creating the stub file?

2 A: The employees in the Urgent  
3 Care Facility, the emergency room. They  
4 are responsible for creating and  
5 inputting the data for the stub file.

6 Q: Okay. Is that all done  
7 electronically? I'm sorry to interrupt.

8 A: Yes sir. It's all done on  
9 the computer, it's called the ASSIST  
10 program, and like I said, it's a VA  
11 software program. Once the claim is  
12 filed, put in the stub file, once that is  
13 created, then the employee has the  
14 responsibility to go in and complete  
15 their portion of it. The initial page,  
16 the first page, I think it's the first 16  
17 questions or so, are, the answers come  
18 from directly from the employee. After  
19 the employee has done their portion of  
20 that, then it automatically, an email  
21 automatically gets generated to the  
22 supervisor that they have listed when  
23 they created the stub file and then that  
24 supervisor has the responsibility to go  
25 in and complete their portion of the

9

1 the initial CA-7 form. The CA-8 form is  
2 a follow-up form for continual  
3 compensation and traditionally I send in  
4 the form, usually every two weeks if the  
5 employee is off on long term. So that  
6 enables a constant paycheck for the  
7 employee from the Department of Labor.

8 Q: Okay, and, were you going to  
9 say something else?

10 A: Yes I was. Initially when a  
11 CA-1 filed, the employee is normally  
12 entitled to continuation of pay for 45  
13 days and those are calendar days. They  
14 run consecutively. But there are some  
15 speculations around that continuation of  
16 pay and when the agency can not pay that  
17 COP.

18 Q: Okay, now, I think I  
19 understand. The CA-1 form is a claim for  
20 traumatic injury. Is that correct?

21 A: That's correct.

22 Q: And a CA-2 for occupational  
23 disease or more progressive type of  
24 injuries. Is that also correct?

25 A: That is also correct.

1 file, of the form. When Mr. Johnson  
2 submitted his form, again, we were not  
3 electronically transmitting them down to  
4 the Department of Labor so we had to  
5 print them off and, on paper, and paper  
6 file, actual paper copy of it, and then  
7 we had to fax them down to the Department  
8 of Labor. That was the way they were  
9 being transmitted when Mr. Johnson had  
10 his incident.

11 A: Okay. Now, you said  
12 something about a CA-7 and CA-8. What  
13 are those?

14 Q: A CA-7 form is a claim for  
15 compensation. It's the initial claim  
16 that gets sent in. There's information  
17 on that form such as the employee's  
18 health insurance, life insurance, whether  
19 or not the employee has dependants or not  
20 because they need that information  
21 because Workers' Compensation from the  
22 Department of Labor is based on 66 2/3%  
23 if they do not have dependants versus 75%  
24 if they do have dependants. So that  
25 information is all submitted on the CA-7,

10

1 Q: And those two are initial  
2 applications for benefits. Is that...

3 A: Those two are initial  
4 applications to, initial submissions to  
5 report an injury or illness.

6 Q: They are your claim forms?

7 A: That is correct.

8 Q: And then, in my  
9 understanding, the CA-7 and CA-8 are  
10 forms that you submit during the ongoing  
11 receipt of benefits to continue to  
12 receive benefits?

13 A: To continue to receive  
14 compensation. Yes sir. The CA-7 starts  
15 the compensation and the CA-8 continues  
16 the compensation.

17 Q: Okay. And are there forms  
18 3,4,5 and 6?

19 A: There's a 2A which is a claim  
20 for recurrence. I don't think there's a  
21 3,4,5, or 6 but, I'm trying to think, if  
22 there are, we don't use them and if there  
23 are those forms, they're not electronic.

24 Q: So, then, I think you stated  
25 that in, at the time,

1 processed his claim for benefits, you  
2 were using the electronic filing system  
3 but you did not have the electronic  
4 transmission system?

5 A: That is correct.

6 Q: So what would happen is the  
7 employee would have to come in, sit down  
8 in front of the computer, type in certain  
9 information and then you would have to  
10 print it out to sign and transmit. Is  
11 that?

12 A: To sign it and fax it.

13 Q: Okay. Now what, what is done  
14 by the employee at the time of sitting  
15 down at the computer terminal?

16 A: They input the information  
17 that's on the front page of the CA-1.  
18 The first of the 16 questions.

19 Q: And the forms, let me show  
20 you the documents. Did you write 21 on  
21 yours? Let me see that document that you  
22 have there. I'm going to mark this one,  
23 this March 25<sup>th</sup> 2000 correspondence from  
24 Lewis Johnson to George Irvin, EEO  
25 Counselor and Exhibit 21. That you can

13

1 complete the form?

2 A: In the hard copy there was,  
3 there's nothing in the electronic copy.

4 Q: Mr. Johnson had indicated to  
5 me that on the back of both of these on  
6 the hard copy, there was supposed to be  
7 instructions for completing the form. Is  
8 that...

9 A: On the hard copy I believe  
10 there is instructions, yes.

11 Q: And those instructions are  
12 there for what purpose?

13 A: To, actually to assist the,  
14 an employee to fill out the forms.

15 Q: And, how, what instru, are  
16 there electronic instructions for the  
17 employee?

18 A: No, not that I'm aware of.

19 Q: So, how, when an employee  
20 comes in to sit down and then fill out  
21 the forms electronically, how...

22 A: The supervisors were all  
23 given training on how to help, to assist  
24 the employees to fill out the forms,  
25 and/or I will offer my assistance to help

1 just set aside for the time being. I'm  
2 going to give you another document, I'm  
3 going to mark it as 22. And you had  
4 docum, mark that Exhibit number 22. I'm  
5 just going to ask you to take a look at  
6 that, to tell me what that document is.

7 A: Okay, the first page is a CA-  
8 2. It's actually a receipt that Mr.  
9 Johnson submitted a claim to his  
10 supervisor and the bottom sheet is a CA-1  
11 which also says that Mr. Johnson  
12 submitted the claim for a traumatic  
13 injury.

14 Q: Okay, and these are the  
15 actual, these are a page of the forms,  
16 correct?

17 A: This is the third page of  
18 both forms, that's correct.

19 Q: And, these are the actual  
20 ones signed and submitted by Mr. Johnson.  
21 Is that correct?

22 A: That's correct.

23 Q: Now the, on the form, a hard  
24 copy of this form, is there instructions  
25 to assist the employee and to how to

14

1 an employee fill out the form.

2 Q: Did you have, do you recall  
3 the actual processing of Mr. Johnson's  
4 forms, pretty much what you're here to  
5 testify about today.

6 A: Yes.

7 Q: He had indicated to me that,  
8 that there was a Mr. Robert Dennis that  
9 had contacted him to instruct him to go  
10 to your office for the purpose of, of  
11 processing the Workers' Compensation  
12 forms. Do you recall that?

13 A: I don't know who, I don't  
14 know if Mr. Dennis sent him to my office  
15 or not. Mr. Dennis, being a union rep, a  
16 union steward, union representative, I do  
17 know that I traditionally either will  
18 have the supervisor help the employee or  
19 I will assist the employee to do that.

20 Q: And is there a prescribed way  
21 that it's supposed to be done?

22 A: You have to go in under your  
23 own, we have a system at the VA, it's a  
24 mainframe, it's called D8CP or Vista.  
25 It's a computer system where



1 program is loaded onto. So once the stub  
2 file is created, any employee has the  
3 ability to go in and call up their case  
4 and complete the CA-1 or CA-2 forms.

5 Q: And how is that, is that  
6 password protected?

7 A: Absolutely. It's password  
8 protected by first of all, the employee  
9 has to submit the password to get into  
10 the D8CP or the Vista system and before  
11 the electronic signature at the end, the  
12 employee has to have electronic signature  
13 to sign off on it.

14 Q: And is that, how are those  
15 passwords assigned?

16 A: They're assigned from IRM,  
17 our Information Resource Management  
18 Service and Mr. Johnson should have had  
19 one, actually all employees have one.  
20 They're used to also do things such as  
21 request Leave, such as read mailman  
22 messages, things like that. It's our  
23 actual mainframe system at the VA.

24 Q: Okay, and so is there a  
25 password for each OWCP claim? Or is it

17

1 come up with. Actually, it was already  
2 in place when I took over my current  
3 position. I just continued to use it.  
4 What it says basically is, it outlines  
5 some of the responsibilities and benefits  
6 of the Employee's Compensation Act, it  
7 also lists some of the employee's  
8 responsibilities that are outlined in a  
9 Medical Center memorandum as to their  
10 responsibility to report the injury  
11 immediately to their supervisor, to  
12 obtain medical care, and things like  
13 that.

14 Q: And what is the purpose,  
15 where is a copy of this document kept?

16 A: This particular document is  
17 reviewed with the employee whenever  
18 there's appears to be a claim that's  
19 going to be submitted to the Department  
20 of Labor for lost time or lost wages and  
21 it's kept in a file that I maintain on  
22 the individual that was injured.

23 Q: Okay, and who, who's  
24 responsible for making the determination  
25 that, how an initial claim for benefits

1 the employee's password that their claim  
2 is processed under?

3 A: It's the employee's password  
4 that the claim is processed under. The  
5 computer actually knows which employee is  
6 in there trying to get at their  
7 particular file. And it's protected in  
8 such a way that, because of the privacy,  
9 that it will not allow another employee  
10 to look at another employee's file. It  
11 will also only allow the supervisor, who  
12 is named as the employee's supervisor, to  
13 look at that file and to do any changes  
14 or any input into that file. So for  
15 example, if Mr. Johnson did not list you  
16 as his supervisor, you could not go in  
17 there and do anything to that CA-1 form  
18 or that CA-2 form.

19 Q: I'm going to hand you a copy  
20 of the document marked Exhibit 23. If  
21 you could tell me what that document is.

22 A: Yes, this is an Injured  
23 Employee's Notification of  
24 Responsibilities. It's a locally  
25 generated form that we've, that we've

18

1 is going to be processed, meaning which,  
2 is it going to be a CA-1 or a CA-2. Who  
3 makes that determination?

4 A: The employee, based on the  
5 injury of the employee, that's what  
6 determines whether or not the CA-1 or CA-  
7 2.

8 Q: Okay. And, but who, do you  
9 understand that in Lewis Johnson's case,  
10 he originally processed, it was  
11 originally processed under a CA-1.  
12 That's correct. Who made that decision,  
13 that determination?

14 A: When he went down to Urgent  
15 Care, one of the questions is whether or  
16 not it's an illness or an injury. So one  
17 of the nursing staff down there would  
18 have determined at that point, based on  
19 the information received from the  
20 employee, whether or not it was a CA-1 or  
21 a CA-2. And that's what would have been  
22 entered.

23 Q: But at the point when Mr.  
24 Johnson, I guess he came to your office?  
25 A: Yes.

1 Q: Okay, what information did  
2 you know about everything that had gone  
3 on with Mr. Johnson? As far as the  
4 background for his claim.

5 A: I did not know anything, what  
6 went on about the injury until I met with  
7 Mr. Johnson.

8 Q: And when did you meet with  
9 Mr. Johnson?

10 A: When the CA-1 was completed,  
11 I forget what the date is. That was the  
12 initial, that was our initial meeting  
13 when we met.

14 Q: I think I actually have that,  
15 I'll show you a copy of the document we  
16 marked as Exhibit 18. Do you recognize  
17 that document?

18 A: Yes sir.

19 Q: And that that is the CA-1  
20 form that was originally processed by Mr.  
21 Johnson, correct?

22 A: Yes.

23 Q: And on the third page of that  
24 document, is a signature at the bottom.  
25 Is that your signature?

21

1 this alleged assault?

2 A: Once Mr. Johnson came to my  
3 office to complete this form, a lot of  
4 the information came as to what was, what  
5 occurred on this date. And also, then,  
6 after I did, after I got some, the police  
7 reports and after I talked with Mr.  
8 Kiscadden, and Mrs. McQuigin, then it was  
9 brought up there was some other, there  
10 was possibly another incident that  
11 occurred prior to this.

12 Q: Okay. And when did you talk  
13 to, get the police reports and talk to  
14 Mrs. McQuigin, and Mr. Kiscadden?

15 A: It was a few days after this.  
16 I was trying to round up as much  
17 information as I could. It was a few  
18 days after Mr. Johnson had completed his  
19 form because I wanted to submit  
20 everything to the Department of Labor at  
21 one time.

22 Q: So what is your process after  
23 a form is completed?

24 A: Normally, this would be all  
25 the information that we would have, along

23

1 A: Yes it is.

2 Q: Okay. And, you said that the  
3 first time you met with Mr. Johnson is  
4 when you had information about the  
5 incident, correct?

6 A: Yes.

7 Q: And would that be October 26<sup>th</sup>  
8 of 1999?

9 A: Yes, that's when we completed  
10 the form.

11 Q: Okay, now what, at the time  
12 of the completion of this form, what  
13 information did you have about Mr.  
14 Johnson's situation? The basis for his  
15 claim?

16 A: At this particular time, on  
17 the 26<sup>th</sup>, I was informed of the physical  
18 assault that happened to him, alleged to  
19 have happened, Done to him by a Mr. Irv  
20 Erickson.

21 Q: Did you know anything else,  
22 about a history of the problems between  
23 Mr. Erickson and Mr. Johnson?

24 A: No, I did not.

25 Q: And how did you know about

22

1 with the medical documentation that was  
2 taken during the visit down in Urgent  
3 Care. So that's normally what gets filed  
4 with the forms, just the initial medical  
5 documentation as well as this form here,  
6 or any other pertinent information that  
7 the Department might need to make a  
8 decision on a claim.

9 Q: And what, why were you, after  
10 the completion of this form, then you had  
11 conversations with, where you got  
12 information from the police and you had  
13 conversations with Mr. Kiscadden and Ms.  
14 McQuigin. Why were you, what were you  
15 doing during that process?

16 A: Because there was a lot more  
17 information that needed, that needed to  
18 be submitted with the claim itself so  
19 that the Department of Labor had the full  
20 picture of what was being alleged here.

21 Q: And, so who made the  
22 determination that the Department of  
23 Labor needed to have more information?

24 A: I normally make that  
25 decision. I mean, they're sitting down

1 there behind the desk trying to make a  
2 determination about a claim based on the  
3 information that I provide them. And  
4 it's my responsibility as an agency  
5 representative to provide them with as  
6 much information as I can concerning the  
7 claim.

8 Q: So you knew that there was  
9 more to it than just the matter of the  
10 one incident?

11 A: The alleged physical assault  
12 caused by another employee at 10:20am,  
13 yes.

14 Q: And what more did you know  
15 was involved?

16 A: Again, I got a copy of the  
17 police reports and I read over the police  
18 reports, I also read over the witness  
19 statements that were provided to the  
20 police. And I submitted all of that  
21 data, all that information to the  
22 Department of Labor for them to use.

23 Q: Okay. And did you understand  
24 at the time that Mr. Johnson was not  
25 claiming to have been injured in the

25

1 all that information, all this, this  
2 bigger story came to light.

3 Q: Okay, well what about, what  
4 did you know about Mr. Johnson not being  
5 able to return to his work?

6 A: Doctor Brinzer had put him  
7 off duty. I had known that. And he had  
8 referred him to some outpatient care at  
9 Philhaven. That was, we received a  
10 letter from, I think it was a Doctor, I  
11 don't recall, Doctor Picolla?

12 Q: Picolla.

13 A: It was Doctor Picolla stating  
14 that Mr. Johnson was unable to return to  
15 work at this time.

16 Q: And what did you do after  
17 learning of that?

18 A: Again, I gathered all the  
19 information that I could, and if the form  
20 was not processed by then, I believe, if  
21 the form was not processed by then, I  
22 attached any of the information that I  
23 have already been in receipt of, from  
24 Doctor Brinzer's office, I attached the  
25 script and the referral to Philhaven, and

1 actual assault?

2 A: That's not what the CA-1,  
3 that's not what was reported on the CA-1  
4 sir, no, I did not understand that.

5 Q: Okay, well where's the injury  
6 reported on the CA-1?

7 A: Number 13.

8 Q: Okay, "which causes stress  
9 and strain". And who is that information  
10 input by?

11 A: Mr. Johnson.

12 Q: But you were, despite knowing  
13 that, despite seeing that, you went and  
14 did additional investigation.

15 A: I did not do any  
16 investigation, I just gathered the  
17 reports from the investigations to submit  
18 with the claim. If there was a physical  
19 assault, the police department was  
20 looking to file charges against the  
21 employee. Or, there was also some  
22 concern about what developed out of that  
23 as to keeping two employees apart and Mr.  
24 Johnson returning to duty at some time,  
25 at some point. So, as I was gathering

26

1 all that information was put together in  
2 a package to be sent down to the  
3 Department of Labor.

4 Q: And is it, the determination  
5 as to whether to submit it as a CA-1 or a  
6 CA-2, I mean, at the time that Mr.  
7 Johnson (strike that). At the time an  
8 employee sits down at the computer, do  
9 they know what form they are processing?

10 A: Again, based on the  
11 information that they received down in  
12 Urgent Care, Urgent Care staff down there  
13 determines whether or not it's a  
14 traumatic injury or an occupational  
15 illness, based on the information they  
16 received. Now Mr. Johnson did not go to  
17 the Urgent Care area, as the policy  
18 states for him to do. He went to his  
19 private attending physician, which was  
20 Doctor Brinzer, who, that's in his  
21 rights, within his rights in the Federal  
22 Employee Compensation Act to do that.  
23 Once I received the information from Mr.  
24 Johnson as to what happened, I stated in  
25 Number 13, a physical assault caused by

1 another employee, that was what  
2 determined how the, which form was going  
3 to be filed.

4 Q: But the difference in  
5 processing a CA-1 and a CA-2 is based  
6 upon the nature of the injury. Is that  
7 correct?

8 A: Correct.

9 Q: And under, I mean, what's the  
10 difference when you describe in terms of  
11 the nature of the injury, what's the  
12 difference between a claim that's  
13 processed on a CA-1 versus a claim that  
14 is processed on a CA-2?

15 A: I'm sorry, I don't understand  
16 the question.

17 Q: How do you define traumatic  
18 injury, such as to process a CA-1?

19 A: The Federal Employee  
20 Compensation Act defines the traumatic  
21 injury and also the occupational illness.

22 Q: And what about stress and  
23 aggravation as a result of work  
24 environment?

25 A: If it's a one time

29

1 Q: Well at that point, when it  
2 came to the point of there being more  
3 allegations, why, why wasn't it submitted  
4 as a CA-2?

5 A: Again, based on the  
6 information in Number 13 where it was a  
7 physical assault, that's what Mr. Johnson  
8 was, said was the initial problem and the  
9 problem. I didn't realize that Mr.  
10 Johnson had a problem with something that  
11 happened prior to this date of 10/18  
12 until well into this process, until  
13 probably a month after this was already  
14 submitted to the Department of Labor.

15 Q: Okay, but I thought you said  
16 that you were gathering information from  
17 the police and from his supervisors?

18 A: Yes.

19 Q: You didn't learn in the  
20 course of that that there was some  
21 allegations of racially incentive, a  
22 remark made to Mr. Johnson that...

23 A: There were allegations, they  
24 were allegations, yes. Did I realize  
25 that it affected Mr. Johnson to the

1 occurrence, which this started out to be,  
2 a one time occurrence, then a CA-1 would  
3 be processed irregardless if it's stress,  
4 strain, a cut finger, a cut toenail.

5 Q: And, this form does say,  
6 "nature of injury traumatic mental stress  
7 and strain". Is that still consistent  
8 with filing as a CA-1?

9 A: Yes.

10 Q: Because all you knew was  
11 that, at the time, allegedly one incident  
12 involved in it.

13 A: Yes.

14 Q: But then, during the course  
15 of your gathering information, didn't you  
16 determine that there was more involved in  
17 it than just one incident?

18 A: There was more allegations.  
19 I don't know whether or not those  
20 incidents actually took place. But there  
21 were more allegations.

22 Q: And did you make those more,  
23 those allegations part of your processing  
24 of this claim?

25 A: Yes, they were a part of it.

30

1 effect that we should have submitted a  
2 CA-2? No.

3 Q: But you did realize that  
4 there were allegations, you realized that  
5 before you submitted the CA-1, correct?

6 A: I had all the information  
7 from the police reports and the witness  
8 statements but I didn't realize that  
9 there was, that Mr. Johnson was claiming  
10 anything other than the physical assault  
11 that happened on the 18<sup>th</sup> of October.

12 Q: Okay. Did you ask him?

13 A: When we sat down initially to  
14 complete this form, I tried to help him,  
15 I tried to assist him in getting the  
16 information that we needed to determine  
17 whether or not this should have been a  
18 CA-1 or a CA-2. And that's what, based  
19 on his comments and remarks and the  
20 information that he provided, that's why  
21 we submitted a CA-1.

22 Q: Okay, and, but he didn't, you  
23 said that there's no, no instructions for  
24 the employee on the computer.

25 A: No, there is not.

1 Q: Did you have, separately have  
2 discussions with Mrs. McQuigin and Mr.  
3 Kiscadden about the injuries for this  
4 claim?

5 A: I did talk with Mr. Kiscadden  
6 and Mrs. McQuigin, yes.

7 Q: Why did you talk to them?

8 A: Well, I wanted to ensure that  
9 when I was preparing my letter to the  
10 Department of Labor that they were aware  
11 that we were responding and doing the  
12 things that we needed to do as an agency  
13 to keep the two employees separated so  
14 that when Mr. Johnson was ready to return  
15 to duty, he could do so as quickly as  
16 possible.

17 Q: So, you realized that there  
18 was enough of a situation between these  
19 two employees that necessitated Mr.  
20 Johnson being out of work and, you know,  
21 warranted intervention before he could  
22 return to work. Is that fair to say?

23 A: Yes.

24 Q: Okay. And then how long  
25 after October 26<sup>th</sup>, 1999, which is the

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1 things that's listed in the Federal  
2 Employee's Compensation Act to controvert  
3 a claim is a lack of medical evidence,  
4 lack of medical documentation. So at  
5 this point, I did not receive additional  
6 medical documentation other than Doctor  
7 Brinzer's note and because of that, I  
8 provided all this information, plus it  
9 was controverted based on the lack of  
10 medical documentation this is for.

11 Q: Okay, so when you use the  
12 term "lack of medical documentation",  
13 you're saying an actual, you actually  
14 didn't receive documentation?

15 A: Other than the original  
16 script from Doctor Brinzer's office at  
17 which I submitted with this, with the CA-  
18 1 packet, I don't think there was very  
19 much information from, in fact, I know  
20 there was not very much information from  
21 Philhaven received. Actual sound  
22 information, other than, I think I might  
23 have, Doctor Picolla's letter might have  
24 gone down with this packet, I'm unsure of  
25 that, we'd have to look in the packet and

1 date that you signed this, did you submit  
2 the actual form for processing?

3 A: I'm not positive, but I think  
4 it was submitted on November 1<sup>st</sup>. And it  
5 should have been there, there should be a  
6 fax.

7 Q: Actually I have the letter  
8 here to that I need to show you at this  
9 point. This is a document that we  
10 previously marked as Exhibit 11. Take a  
11 moment and review that.

12 A: Okay, I'm familiar with it.

13 Q: And is this, the second page  
14 of that letter, Exhibit 11, is that your  
15 signature?

16 A: Yes sir.

17 Q: Now, this, what all (strike  
18 that). And in submitting this claim  
19 your controverting the claim, correct?

20 A: I was, I am disputing the  
21 claim, not so much, and that's why, I'm  
22 disputing the claim and that's why I  
23 submitted all the information. There's  
24 only certain things that you can do to  
25 controvert a claim. And one of the

34

1 see.

2 Q: Was there information, here's  
3 a document marked as Exhibit 12 that we  
4 looked at yesterday as well. That is a  
5 release that was signed by Mr. Johnson on  
6 October 21, 1999 releasing, authorizing  
7 Philhaven to release information to the  
8 VA. It was directed to Mr. Kent. I  
9 mean, what more did you need to get the  
10 information from Philhaven?

11 A: It's the employee's  
12 responsibility to provide the medical  
13 documentation. And we received no  
14 medical documentation from Philhaven  
15 because of this.

16 Q: Why didn't you request it?

17 A: It's the employee's  
18 responsibility to provide it.

19 Q: Well, doesn't the employee  
20 complete his responsibility when he  
21 authorizes a release of information?

22 A: No, it's the employee's  
23 responsibility to provide it.

24 Q: So because Mr. Johnson did  
25 not actually go and gather the documents



1 and collect them and put them in an  
2 envelope and bring them to your office,  
3 the lack of medical documentation,  
4 despite the fact that the VA had a  
5 release, an authorization for release of  
6 information, the absence of that  
7 documentation is his fault?

8 A: It's the employee's  
9 responsibility to provide medical  
10 documentation to support it.

11 Q: Well, what do you mean  
12 provide medical documentation?

13 A: Whether he needs to ask his  
14 doctor for it physically, whether he  
15 needs to have them mail it to me or fax  
16 it to me, it's his responsibility or his  
17 or her responsibility to provide it.

18 Q: Well did you, prior to  
19 November 1, 1999, did you go to Mr.  
20 Johnson and say "I haven't received the  
21 medical documentation?"

22 A: Mr. Johnson was informed when  
23 we went over his Injured Employee's  
24 Notification of Responsibilities on the  
25 26<sup>th</sup> that it's his responsibility to

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1 from Philhaven, correct?

2 A: Yes.

3 Q: And despite knowing that, and  
4 you still chose not to contact Mr.  
5 Johnson, you just decided to controvert  
6 his claim because he didn't have the  
7 documents, correct?

8 A: I have, I deal with about 200  
9 claims a year. It's told, when we go  
10 over the Notification of Employee's  
11 Responsibility, it's their responsibility  
12 to provide it.

13 Q: Have you ever contacted  
14 anybody to request documentation?

15 A: No, not after the initial  
16 Injured Employee's Notification of  
17 Responsibility. I make them, the  
18 employee's perfectly aware of the fact  
19 that it's their responsibility to submit  
20 it to the Department of Labor. Or at  
21 least submit it to me so that I can  
22 submit it to the Department of Labor.

23 Q: What is a CA-16?

24 A: That's a Department of Labor  
25 form that is used by some agencies to

1 provide it.

2 Q: Why don't you answer my  
3 question though.

4 A: I probably did not go back to  
5 him and ask him to provide any more, I  
6 don't think so.

7 Q: And yet you are going to  
8 controvert his claim based on an absence  
9 of documentation when any absence of  
10 documentation could have been remedied by  
11 picking up the telephone and saying,  
12 "Lewis, are you going to provide us with  
13 any documentation?" Right?

14 A: If he would have provided us  
15 with the medical documentation, it would  
16 have been submitted.

17 Q: If you would have asked him  
18 for the medical documentation, he would  
19 have had an opportunity to provide it  
20 correct?

21 A: Perhaps he would have had the  
22 opportunity to provide it.

23 Q: And you knew you did not have  
24 medical documentation despite the fact  
25 that you had a release for information

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1 authorize treatment to a private  
2 physician.

3 Q: And what is a CA-20?

4 A: A CA-20 is a report that  
5 comes from the physician, I forget the  
6 exact title of it, but it's a  
7 physician's, Attending Physician's Report  
8 of Treatment, I believe is the title.

9 Q: The document over there  
10 marked as Exhibit 21, you had a chance to  
11 review that before we started the  
12 deposition, correct?

13 A: Yes, I did.

14 Q: He, this indicates that,  
15 we'll go through it paragraph by  
16 paragraph. Let's start with the second  
17 paragraph. It indicates that on October  
18 26<sup>th</sup> he arrived at 8:30 in the Human  
19 Resources Office and indicated he was  
20 there to, because of the assault. And  
21 you replied, "You're here to put in a  
22 claim because you were assaulted." Is  
23 that...

24 MERSHIMER: I'm sorry, just for  
25 the record, that "he" is Lewis Johnson.



1 OSTROWSKI: He is Lewis Johnson,  
2 yes.

3 MERSHIMER: Otherwise it's just  
4 going to read just as blank he and...

5 OSTROWSKI: Okay. Is that, is  
6 what he said in the first paragraph  
7 accurate, consistent with your  
8 recollection?

9 STUCKEY: I'm not sure of the  
10 exact words but yes, Mr. Johnson did come  
11 to my office and we did discuss his claim  
12 and putting in for a claim.

13 Q: And at that point, you said  
14 that there was, the medical, the nurses,  
15 the Medical Office, the...

16 A: Urgent Care.

17 Q: Urgent Care. Urgent Care was  
18 supposed to have made a determination as  
19 to what form was to be used, but Mr.  
20 Johnson didn't go to Urgent Care.

21 A: Correct.

22 Q: So, in the absence in, and  
23 you said he was authorized not to go to  
24 Urgent Care, correct? There wasn't a  
25 problem...

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1 A: Yes.

2 Q: And, when you create a stub  
3 file, does that then dictate how a claim  
4 is processed?

5 A: Right, whether or not it's a  
6 CA-1 or a CA-2.

7 Q: And at the time Mr. Johnson  
8 came to you, what was all the information  
9 that you had about what happened to him?

10 A: The initial information  
11 that's on the, that's contained on the  
12 CA-1, there was a physical assault.

13 Q: But I understood that we were  
14 saying that at the time, the first day he  
15 came to you was on October 26<sup>th</sup>, 1999.

16 A: Yes.

17 Q: So, the first time he came to  
18 you, you didn't have the CA-1 form.

19 A: That's correct.

20 Q: Because that's what he was  
21 going to sit down and fill out, correct?

22 A: Yes sir.

23 Q: So only had, and you were  
24 responsible then for determining what  
25 form he was going to fill out?

1 A: The Federal Employee

2 Compensation Act says he can seek private  
3 attending physician. However, our policy  
4 does state that he report to Urgent Care  
5 initially for treatment, for triage, not  
6 triage but initial evaluation.

7 Q: And is that typically when  
8 someone breaks a bone or gets a cut or...

9 A: That's our policy, that's  
10 what it says per policy.

11 Q: Now, in, when an employee  
12 doesn't go to Urgent Care, how is that  
13 determination made as to what form to  
14 submit?

15 A: Okay. I have the ability to  
16 go into the computer and create a stub  
17 file. So does every supervisor at our  
18 facility. As well as the Urgent Care  
19 folks.

20 Q: I missed the very beginning.

21 A: I have the ability to go in  
22 there and create, I have the access to go  
23 in and create a stub file.

24 Q: Did you create a stub file  
25 with respect to this claim?

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1 A: Yes.

2 Q: Okay. And, you had the  
3 opportunity when he came in to ask him  
4 questions about what happened and what he  
5 was there for, right?

6 A: Yes.

7 Q: Okay, then the next  
8 paragraph, is that accurate?

9 A: Which one are we at sir?

10 Q: The one, "I was instructed..."  
11 Yeah.

12 A: Other than the fact that he  
13 stated however his computer was not yet  
14 connected but he would type the claim  
15 anyways, I don't understand what that  
16 means. We were already up and running  
17 with the ASSIST program for one year.  
18 Again, I told you earlier that we  
19 initiated it in October of 1989...

20 Q: '98.

21 A: I mean, I'm sorry, yes, '98  
22 and this being October '99, we've already  
23 had it in place for one year.

24 Q: But you still couldn't do the  
25 submission electronically?

1 A: We could not do the  
2 electronic submission, that's correct.

3 Q: Then the next paragraph, he  
4 references concerning the CA-1 form, "I  
5 was given a form CA-1 Revenue," or  
6 whatever that is, "Revised November  
7 1989." What is that form?

8 A: If Mr. Johnson completed the,  
9 once Mr. Johnson completed his CA-1 form,  
10 I printed it out for his signature and I...

11 Q: Okay, is that CA-1 Revised  
12 November 1989, is that the last page of  
13 the CA-1 form?

14 A: No, it's the first, actually  
15 it's, the three pages of the CA-1.

16 Q: Right but you know he's  
17 talking about the document that was  
18 already signed.

19 A: Oh, I'm sorry, yes, this is,  
20 you're right, you're correct, yes, it is  
21 the third page. That would've been the  
22 receipt saying that Mr. Johnson has filed  
23 a CA-1 form with the agency. And that's  
24 for his protection so that someone can't  
25 say it was buried in someone's desk and

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1 should have given me the form to complete  
2 and submit to my immediate supervisor."  
3 Is that accurate?

4 A: That is not accurate. As I  
5 told you before, we were already using  
6 the ASSIST program for one year and that  
7 was the VA's determination to use that  
8 system and that was the new system that  
9 they were using. We were not using paper  
10 forms any longer.

11 Q: Okay. Now, excuse me, the  
12 second full paragraph on that page talks  
13 about John Snidely contacting Ray Kent to  
14 explain the nature of the injury and to  
15 recommend a treatment. Did you, were you  
16 aware that Mr. Kent had spoken with Mr.  
17 Snidely?

18 A: Yes, I was.

19 Q: And how did you become aware  
20 of that?

21 A: Mr. Kent called me into his  
22 office to discuss it.

23 Q: And when did he call you in  
24 his office to discuss it?

25 A: I don't know the date. It

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1 it was never submitted. You have  
2 timeframes in which to send, in which to  
3 file claims with the Department of Labor.  
4 So this is a receipt so to speak that he  
5 filed a claim with the agency.

6 Q: And then, from the bottom of  
7 that first page, over onto the top of the  
8 second page, "Mr. Stuckey informed me  
9 that he would run the forms over to my  
10 supervisor, Rodney Kiscadden, for his  
11 signature." Is that accurate?

12 A: Right.

13 Q: Now why, what's the purpose  
14 of going over to have the Supervisor sign  
15 the forms?

16 A: I have to have signed forms  
17 of the CA-1's before I can fax them down  
18 to the Department of Labor.

19 Q: Aren't you, isn't one of the  
20 requirements also to have a narrative  
21 summary of what went on?

22 A: It's not a requirement, no.

23 Q: Now, on the second paragraph  
24 on the second page, the first full  
25 paragraph, it indicates that "Mr. Stuckey

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1 was, it was, I don't know the date.

2 Q: Was it before Mr. Johnson  
3 came to you?

4 A: I don't recall, sir. We had  
5 numerous discussions concerning the case  
6 and I just don't recall if it was before  
7 or after Mr. Snidely, or after Mr.  
8 Johnson came to my office.

9 Q: So you can't say whether it  
10 was before or after, you simply don't  
11 recall?

12 A: That's correct, I can't say  
13 for sure, no.

14 Q: What did, you said that Mr.  
15 Kent called you to his office?

16 A: Yes.

17 Q: When Mr. Kent called you to  
18 his office, what did Mr. Kent say?

19 A: To the best of my  
20 recollection, we discussed, I think he  
21 informed me that Mr. Johnson had, was  
22 going to file a claim because of the  
23 incident that happened with Mr. Erickson  
24 and basically gave me a brief outline of  
25 what happened.

1 Q: And said that Mr. Johnson was  
2 going to file the claim?

3 A: Well, that's what the normal  
4 procedure is, I mean, if it was a  
5 Workers' Comp and Mr. Johnson was out on  
6 lost time, which is what he was, and he  
7 could not return to work, he would, he  
8 would be required to file a form with the  
9 Department of Labor.

10 Q: Okay, now, what I want to  
11 focus in on is, I'm trying to get as  
12 specifically as you recall what that  
13 conversation was with Mr. Kent. And you  
14 said that Mr. Kent said that Mr. Johnson  
15 was going to file a claim. Is that  
16 correct?

17 A: That was somewhat adlib, I  
18 don't recall, I don't recall the exact  
19 words or the exact things that happened  
20 on each day that Mr. Kent and I discussed  
21 this claim.

22 Q: But you do, I'm sorry, did I?

23 A: I just said "claim"

24 Q: I'm sorry to interrupt you.  
25 But you did, are you clear that Mr. Kent

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1 that he spoke with Mr. Snidely?

2 A: Again, Mr. Kent and I had  
3 several conversations concerning this  
4 case, so I don't recall specifically what  
5 was said. He probably just gave me a  
6 background of what was happening and what  
7 the conversation was from Mr. Snidely  
8 from Philhaven.

9 Q: Was there any separate  
10 discussion about Mr. Johnson, Mr.  
11 Johnson's employment or anything like  
12 that?

13 A: No.

14 Q: If you could just kind of go  
15 through and tell me everything that  
16 you've ever talked about with Mr. Kent,  
17 well not everything you've ever talked  
18 about, let's keep it limited to this 1999  
19 timeframe. Everything, all the  
20 conversations that you had with Mr. Kent  
21 about Lewis Johnson or this claim?

22 A: Mr. Kent and I would probably  
23 just have discussions concerning what was  
24 happening in the status of the claim.  
25 Mr. Snidely was making contact with Mr.

1 called you in to talk about it?

2 A: Absolutely.

3 Q: And after Mr. Johnson spoke  
4 with you and filled out the CA-1, did Mr.  
5 Kent have any reason to call you in?

6 A: After we had filled out the  
7 form?

8 Q: Yes.

9 A: No, there was no reason for  
10 him to call me then.

11 Q: So, based upon this review of  
12 these facts, does that refresh your  
13 recollection at all as to whether Mr.  
14 Kent contacted you, called you in before  
15 Lewis Johnson had come to your office  
16 about submitting a claim?

17 A: It would be my best  
18 recollection that it was probably before  
19 Mr. Johnson and I spoke, since there was  
20 such a big time period between the time  
21 Mr. Snidely called and the time of  
22 October 26<sup>th</sup> when we filed the claim.

23 Q: And what else did you and Mr.  
24 Kent discuss during the first time that  
25 you talked about it, when he told you

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1 Kent and was not talking directly with  
2 me, so when Mr. Kent heard from Mr.  
3 Snidely, he relayed that information to  
4 me so that I was aware of what was going  
5 on.

6 Q: And what else did you and Mr.  
7 Kent talk, you said you talked to him  
8 several times, I think was the word that  
9 you used.

10 A: Besides the progression of  
11 the case, such as getting the police  
12 reports, the things like that that were  
13 being, that were going to be submitted  
14 for the claim.

15 Q: And then, let's continue on  
16 then with Exhibit 21. Well now before we  
17 do that, the time when you spoke with Mr.  
18 Kent about him speaking with Mr. Snidely,  
19 did you discuss, in what detail did you  
20 discuss what Mr. Kent had talked to Mr.  
21 Stidely about, or Snidely?

22 A: It was information again  
23 about Mr. Johnson returning to work and  
24 to make sure that we had the employees  
25 were going to be separated and what we

1 were going to have in place, or what  
 2 management was going to have in place to  
 3 make sure that there wasn't going to be  
 4 any further confrontations or any of them  
 5 two individual employees getting  
 6 together. We were going to try to keep  
 7 them separated as much as we could.

8 Q: Now, down in the following  
 9 paragraph, that would be the last full  
 10 paragraph on that page, "Beginning on or  
 11 about November 23<sup>rd</sup>, 1999", do you recall  
 12 meeting with a gentleman by the name of  
 13 William Dumas?

14 A: Yes.

15 Q: And tell me about what you  
 16 recall?

17 A: Mr. Dumas and Mr. Johnson  
 18 came into my office several times and  
 19 again, we always had conversations  
 20 relating to Mr. Johnson's claim.

21 Q: Okay, and did you understand  
 22 why they came to your office on that  
 23 date?

24 A: I remember them coming to my  
 25 office, again, several times, and I'm not

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1 A: This is where the claim was.

2 Q: I think what, and I'm purely  
 3 speculating based upon the language, but,  
 4 he appears to be saying that you told him  
 5 that it was OWCP in Philadelphia that was  
 6 controverting the claim and not you.

7 A: They are the ones that make  
 8 the decision on the claims. I do not. I  
 9 do not make a decision whether or not the  
 10 claims are accepted or denied. The  
 11 agency does not.

12 Q: Well why in your November 1,  
 13 1999 correspondence, Exhibit 11, I think  
 14 I have it for you there, okay in the  
 15 first paragraph, the last sentence, you  
 16 say, "This claim is being controverted  
 17 based on the information obtained during  
 18 a review of the incident."

19 A: Again, controversion, I  
 20 probably should have used the word  
 21 "disputed" which is now in the new  
 22 software versus "controverted" because  
 23 again, the Federal Employee's  
 24 Compensation Act, FECA, only allows  
 25 certain reasons to controvert a claim.

1 sure if this, if November 23<sup>rd</sup> was the  
 2 date or not that they came to my office,  
 3 but if they did come to my office on that  
 4 particular date, it was, we probably  
 5 talked about the controversion as listed  
 6 here.

7 Q: Now, did he, he does have a  
 8 couple of, he being Lewis Johnson, and  
 9 this is his narrative statement, a couple  
 10 of quotes that appear to be attributed to  
 11 you. And one is that the controversion  
 12 was "a Philadelphia OWCP controversion."  
 13 That should be a closed quote there I  
 14 guess. Is that?

15 A: I don't know what he was  
 16 getting at during that, that sentence.  
 17 If there was a controversion done on the  
 18 claim, it would have gone down to the  
 19 Regional Office of the Department of  
 20 Labor which is in Philadelphia. If  
 21 that's what he's getting at, that  
 22 would've been correct. It would've been  
 23 submitted to the Department of Labor in  
 24 Philadelphia, the Regional Office.

25 Q: Right, but...

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1 So, the language in this letter probably  
 2 should have said "disputed" or  
 3 "questioned" versus the word  
 4 "controverted."

5 Q: Okay, well what will, in any  
 6 case...

7 A: It's the agency's  
 8 responsibility to make the Department of  
 9 Labor aware of any inconsistencies or  
 10 anything that we feel they should have,  
 11 pertinent information about the claim.  
 12 It is the agency's responsibility to do  
 13 that because we are their eyes and ears.  
 14 They just sit there and decide the claim  
 15 based on the information that's submitted  
 16 to them.

17 Q: Now, what was your basis, I  
 18 mean you say this claim is being  
 19 controverted based on the information  
 20 obtained during a review of the incident.  
 21 What is that?

22 A: The allegations made by Mr.  
 23 Johnson, and those are the witnesses and  
 24 things that were obtained in the police  
 25 report were all sent down with this

1 letter. So all that information, I would  
2 have expected the Department of Labor to  
3 look at and review all that information.

4 Q: Well, but I'm asking you what  
5 you were referring to when you said "This  
6 claim is being controverted based on the  
7 information obtained during a review of  
8 the incident?"

9 A: And again, it's all the  
10 information from the witnesses, the  
11 witness statements, the police report and  
12 all the information that was sent down to  
13 them. And the proper word should have  
14 been probably "disputed" versus  
15 "controverted."

16 Q: Well, what in that  
17 information were you disputing?

18 A: The allegations made by Mr.  
19 Johnson and those from the witnesses were  
20 different.

21 Q: Okay. What in particular do  
22 you recall as being different?

23 A: The actions of the two  
24 employees that were involved for one, the  
25 police report that did not substantiate

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1 basis.

2 Q: So, you believe Mr. Erickson  
3 over Mr. Johnson?

4 A: No, I wanted the Department  
5 of Labor to understand and have  
6 everyone's witness statements, and make  
7 the determination themselves. I did not  
8 believe anyone over anyone.

9 Q: Well you were disputing  
10 something. You were obviously...

11 A: I was disputing the disparity  
12 in the witness statements and the  
13 statements, yes.

14 Q: And doth saying that you  
15 believe the white witness over the black  
16 witness?

17 STUCKEY: No...

18 MERSHIMER: Objection to the form  
19 of the question.

20 OSTROWSKI: Maybe, the only thing  
21 I've heard you say that you're disputing  
22 is that Mr. Erickson said one thing, Mr.  
23 Johnson said another.

24 A: It's not in my place to be  
25 the judge of whether or not the claim is

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1 everything that was said or alleged.

2 Q: Now, during this period of  
3 time did you have a statement from a Barb  
4 Yike? Do you recall?

5 A: I believe so, yes.

6 Q: Okay, and what was her, how  
7 did her statement conflict with what Mr.  
8 Johnson said?

9 A: The information that was in  
10 her statement, I believe was  
11 substantiated some of the allegations of  
12 Mr. Johnson. The wording was different  
13 but it did substantiate that something  
14 allegedly happened on that, between those  
15 two individuals on that unit.

16 Q: Okay. And what information  
17 that Mr. Johnson provided hadn't been  
18 disputed, was not consistent with what  
19 anything, what anybody else had said?

20 A: Again, the statement of Mr.  
21 Erickson, the wordage, some of the  
22 wordage that Mr. Johnson stated in his  
23 witness statement versus what witness  
24 statements were from Mr. Erickson, I  
25 think that's pretty much what I used as

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1 accepted or denied. It's just in my  
2 place as an agency representative to  
3 submit all the information that I have  
4 concerning the case.

5 Q: Wait, I thought you said, I  
6 thought you specifically said, you're  
7 responsibility is to make an evaluation,  
8 give a recommendation.

9 A: It's the agency's  
10 responsibility to submit the information  
11 and suggest to the Department of Labor or  
12 to point out irregularities or all the  
13 information that we know at the agency,  
14 but again, it's by no means my, or the  
15 agency's responsibility to determine  
16 whether or not the claim is accepted or  
17 denied.

18 Q: And the only irregularity or  
19 disparity that you were able to tell me  
20 about is the disparity between the  
21 alleged perpetrator's statement and Mr.  
22 Johnson's statement?

23 A: And the police found in their  
24 investigation, found no grounds for  
25 criminal arrest of any of the individuals



1 and just the information that was there  
2 as a whole. I mean, after I reviewed  
3 everything.

4 Q: Now, did you talk to Mr. Kent  
5 about your controversion or dispute of  
6 Mr. Johnson's information before you  
7 submitted the October or November 1<sup>st</sup>,  
8 1999 letter?

9 A: I don't recall if I did or  
10 did not talk to him about it.

11 Q: Were you, were you aware at  
12 the time that Mr. Johnson had a pending  
13 EEO complaint arising out of his non-  
14 selection for a Housekeeping Aide  
15 position back in 1998?

16 A: I, I don't know if I was  
17 aware of it at that time or not.

18 Q: Were you aware that he had  
19 filed an EEO complaint about (strike  
20 that). Were you aware that he had  
21 commenced EEO proceedings regarding the  
22 Irvin Erickson incident?

23 A: Eventually I was notified by  
24 Mr. Irvin from the EEO who had some  
25 questions for me, yes.

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1 controverting the claim because  
2 "something was amiss". Did you say that  
3 to Mr. Dumas and Mr. Johnson?

4 A: I might have said words to  
5 that effect, yes. I'm not sure if those  
6 are the exact words I used.

7 Q: But if that fairly  
8 characterizes what you said, what was...

9 A: There was some disparity,  
10 yes.

11 Q: And is that anything more  
12 than what we've already talked about?

13 A: No. No.

14 Q: And there was no, did you say  
15 anything at that point that "well,  
16 because you didn't give me medical  
17 documentation" or anything? Rate that as  
18 an issue?

19 A: I don't recall on that  
20 particular date. It might have surfaced  
21 that day also.

22 Q: And then it says that they  
23 requested to have the CA-1 withdrawn and  
24 an explanation to OWCP and have a CA-2  
25 submitted for benefits and that you

1 Q: Now, about either of those  
2 complaints that, out of the Housekeeping  
3 Aide non-selection or the matter  
4 regarding Irvin Erickson, were you aware  
5 of either of those, can you say one way  
6 or the other as of November 1, 1999?

7 A: I would say, at that point,  
8 November 1, 1999, I would not have been  
9 aware of that.

10 Q: What facts were you thinking  
11 about that made you make that  
12 determination?

13 A: Because of how quickly we  
14 filed the claim, October 26<sup>th</sup> to November  
15 1<sup>st</sup>. I don't know why that would have  
16 ever surfaced, an EEO, excuse me, the  
17 fact that he was pursuing any EEO  
18 avenues, I don't know why that would have  
19 surfaced to my office. I don't normally  
20 deal with that. I normally deal with  
21 Workers' Comp and Retirement.

22 Q: Now, back to Exhibit, bear  
23 with me here, that Exhibit on page 2, in  
24 its last full paragraph, it indicates  
25 that Mr. Stuckey explained OWCP was

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1 refused to submit the CA-2. Did you have  
2 a discussion of that nature?

3 A: It was my belief yet, that, I  
4 guess I'm using these dates as reference,  
5 it was my belief yet if we had this  
6 conversation on this day, that I still  
7 believe that we filed the correct form.  
8 And I still believe to this day that the  
9 CA-1 was the correct form to use. To  
10 further substantiate that I did notify, I  
11 did have contact with Mr. Anthony McFeely  
12 and discussed the issue after this date,  
13 and I don't remember the exact date I had  
14 that discussion with Mr. McFeely, the  
15 claims examiner. And he substantiated  
16 the fact that he thought that we had  
17 submitted the proper form, the CA-1 form.

18 Q: Okay. Who's Mr. McFeely?

19 A: He's the claims examiner that  
20 handled the CA-1 decision, the decision  
21 on the CA-1 form. Claims Examiner,  
22 Department of Labor.

23 Q: And he denied the claim,  
24 right?

25 A: Eventually it was denied,



1 yes.

2 OSTROWSKI: Now, just, if I can  
3 just do it in general terms, if you  
4 suppose that on day 1, the male  
5 supervisor says to the female employee,  
6 if you go to bed with me, you know, I'll  
7 give you a promotion. And then, on that  
8 day she reports something to another  
9 supervisor that she objected to that  
10 concern, then the following three days  
11 she was forced to work in the same  
12 environment as that, that supervisor and  
13 then on the fifth day the supervisor  
14 approached her and threatened her not to,  
15 not to say or do anything more about what  
16 she had done. And then on the sixth day  
17 that employee comes to your office to  
18 file an OWCP claim, claiming stress and  
19 strain. What would you recommend to her  
20 as far as what form to file?

21 MERSHIMER: I'm going to object  
22 to that question, the form of the  
23 question, that is just so long, so many  
24 parts, and hypothetical. I mean he can  
25 answer it but I'm just putting that

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1 discussion? What can you tell me about  
2 that discussion?

3 A: What I told them at that time  
4 was this. The A-7 form, I don't,  
5 traditionally I don't submit the CA-7  
6 form until the claim has been  
7 adjudicated, one way or the other. I  
8 don't do it because what traditionally  
9 happens is the CA-7's sit down with the  
10 Department of Labor and they get pushed  
11 under a pile and then when the claim is  
12 accepted or denied, well when the claim  
13 is accepted, when they go for payment of  
14 that form, they traditionally do not  
15 have, they do not go back in the file and  
16 look for any CA-7's or CA-8's that were  
17 submitted. So what I found to be a lot  
18 easier for the employee and a lot faster  
19 for the employee to receive compensation  
20 was to wait until the claim was accepted  
21 or denied, actually accepted again, I  
22 apologize. To wait for the claim to be  
23 accepted and then submit the form to them  
24 so that they have them and everything is  
25 right there on their pile and they know

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1 objection on the record.

2 OSTROWSKI: Okay.

3 STUCKEY: I would probably ask  
4 the employee some additional questions to  
5 try to get some more background, some  
6 more information but if it was over a  
7 period of time, if this happened over  
8 more than one time, traumatic injury is  
9 one time, if it happened more than one  
10 time, the stress that he or she felt, it  
11 would have been probably a CA-2  
12 submitted.

13 Q: Then it goes down to the last  
14 paragraph on Page 2 on Exhibit 21, you  
15 recall there being a subsequent  
16 discussion with Mr. Dumas and Mr. Johnson  
17 and yourself?

18 A: Again, there several  
19 discussions with Mr. Dumas and Mr.  
20 Johnson and myself, yes. But again,  
21 based on the information here, they said  
22 it was November 30<sup>th</sup>, on or about that  
23 time we had a discussion concerning the  
24 CA-7.

25 Q: Did you, what was that

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1 exactly what's in front of them and for  
2 compensation purposes.

3 Q: And is this, there was a  
4 statement at the bottom of that page.  
5 Mr. Stuckey again told me "the claim was  
6 being held off by Philadelphia".

7 A: The claim gets decided by the  
8 Department of Labor at the Philadelphia  
9 Regional Office, period.

10 Q: But did you indicate that it  
11 was being held up?

12 A: By being held up I meant they  
13 have not made a decision. That's what I  
14 probably would have told them. They did  
15 not make a decision yet.

16 Q: Is there a normal or average  
17 turnaround time in processing a CA-1  
18 claim?

19 A: No. The Department of Labor  
20 I think has standards but they're really  
21 way out there, I mean they're, they can  
22 take forever to adjudicate one.

23 Q: And, if you can tell me, in a  
24 number of claims where you have made a  
25 controversion recommendation, or have

1 disputed the claim, what percentage of  
2 those cases have your recommendation been  
3 gone with?

4 A: Not having exact, not having  
5 the records in front of me to research, I  
6 would say probably fifty fifty. And  
7 again, that's based on information that I  
8 provide them to look at the claim. It's  
9 not unusual for them to go back to the  
10 employee once, maybe twice, sometimes  
11 three times and ask them additional  
12 information. To try to seek additional  
13 information from the employee. So it's  
14 been my practice to try to get all the  
15 information to them so that they can make  
16 a determination right up front. Because  
17 we're talking about employees that don't  
18 have money here.

19 Q: Okay. Do you need a break or  
20 anything?

21 A: No, I'm fine.

22 OSTROWSKI: Anybody? Well why  
23 don't we take five minutes.

24 RODRIGUEZ: We're going to take a  
25 break. The time now is 12:53, video is

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1 the right times.

2 Q: So that quote is just flat  
3 wrong?

4 A: Yes.

5 OSTROWSKI: Then, the next  
6 sentence, Mr. Dumas asked Mr. Stuckey  
7 about the need for additional medical  
8 reports at which Mr. Stuckey replied,  
9 "Lewis has failed to provide me with any  
10 medical reports." Did you state that?

11 MERSHIMER: Excuse me, for the  
12 record, it says, "Lewis has failed to  
13 provide me with any additional medical  
14 reports."

15 OSTROWSKI: Oh, I'm sorry, I  
16 didn't, my oversight.

17 STUCKEY: I would guess that I  
18 said that if I didn't have the medical  
19 documentation, yes.

20 Q: And (strike that). Let's  
21 move down to the next paragraph. It says  
22 that the Federal Employee's Compensation  
23 Act states that he's supposed to be  
24 informed of any controversion of his  
25 claim and detail of why it's being

1 being suspended.

2 MERSHIMER: It's really 1:02, but

3 OSTROWSKI: When we go back on,  
4 just say what the video shows and then  
5 what the clock shows because our video is  
6 off and that's the problem. Okay?

7 RODRIGUEZ: We are now resuming  
8 video. Camera time is 1:14. Actual time  
9 is 1:25. Please begin.

10 OSTROWSKI: Okay, thank you.  
11 Sorry, it took longer than usual there.  
12 Had to make copies of some things again.  
13 Let's continue on with Exhibit 21, the  
14 March 25<sup>th</sup> 2000 correspondence that Mr.  
15 Johnson sent to Mr. Irvin. The second  
16 paragraph, no, let's stick with that  
17 first paragraph on page 3. It indicates  
18 in the middle of the paragraph that you  
19 stated that you thought it may be the  
20 wrong form but it's okay, there will not  
21 be a problem with that. Did you have  
22 that, did you make that statement?

23 A: No, that's not correct. As I  
24 stated earlier, I still contend to this  
25 day that we submitted the proper forms at

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1 controverted. Is that accurate?

2 A: I'm not exactly sure if it  
3 does say that, but again, we go back to  
4 the, to the usage of words. The Federal  
5 Employee's Compensation Act does outline  
6 what a controversion, for what reasons a  
7 claim can be controverted. I don't know  
8 if it says, if it does say that the  
9 employee needs to be notified.

10 Q: Okay. That whatever the  
11 regulations say about that is what  
12 governs it?

13 A: It's what governs it, yes  
14 sir.

15 Q: Now the following paragraph  
16 indicates that there was an additional  
17 encounter between you, Mr. Johnson and  
18 Mr. Dumas on December 13<sup>th</sup> 1999. Do you  
19 have a recollection of that?

20 A: Not that particular date but  
21 again, we did have several conversations.

22 Q: And, the notion of  
23 controversion, is that, under the  
24 regulations, and again the regulations  
25 will be the authority on the issue, but,

1 do the regulations provide for  
2 controversion?

3 A: Yes.

4 Q: And, who, under the  
5 regulations, makes the controversion  
6 decision?

7 A: I think the agency, if I'm  
8 correct, I believe the agency has the  
9 right to controvert, which goes back to  
10 the continuation of pay and, excuse me,

11 Q: The agency in this case being  
12 the VA?

13 A: Lebanon VA Medical Center.

14 Q: And why, I mean, wasn't, you  
15 said before that you're November 1<sup>st</sup> 1999  
16 letter, Exhibit 11, was not an actual  
17 controversion. Is that...

18 A: It was controverted based on  
19 the fact that I didn't have the medical  
20 documentation. What I was outlining was  
21 actual more of a dispute or more of a  
22 dispute than anything. More of a, what  
23 word am I looking for, I was more or less  
24 disputing it more than anything, or at  
25 least making them aware of the

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1 he didn't know before November 30<sup>th</sup> 1999  
2 that his claim was being controverted?

3 A: I don't recall informing Mr.  
4 Johnson that it was being controverted  
5 before this date.

6 Q: Before what date?

7 A: Before...

8 Q: November 30<sup>th</sup> 1999?

9 A: Yes.

10 Q: Why?

11 A: I don't know why. I don't  
12 have a reason. I don't have an  
13 explanation.

14 Q: Okay. Is there any practice,  
15 normal practice that you have when you  
16 are controverting a claim?

17 A: Normally I notify the  
18 employee.

19 Q: In what period of time?

20 A: As soon as I determine based  
21 on the information I received from, the  
22 information that goes back and forth with  
23 the employee and myself, as soon as I  
24 determine that there is a reason for  
25 controversion, such as not having medical

1 information that was...

2 Q: But you, you, as a  
3 representative of the agency, the agency  
4 can controvert.

5 A: Yes and that again, we can  
6 controvert it and that's what authorizes  
7 us not to pay the Continuation of Pay,  
8 which is the first 45 days of pay. That  
9 comes out of the agency's operating  
10 budget. Just like an employee that was  
11 working every day that they missed.

12 Q: And this was a CA-1 so the  
13 whole Continuation of Pay issue would  
14 have been...

15 A: Relevant.

16 Q: Relevant, yes. And in doing  
17 this, then you were saying that you  
18 weren't going to continue Mr. Johnson's  
19 pay, correct?

20 A: That's correct.

21 Q: And then if the regulations  
22 provide that within ten days  
23 controversion the employee is supposed to  
24 be noticed, or (strike that). Why  
25 didn't, why didn't Mr. Johnson know, if

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1 documentation, so on and so forth.

2 Q: And what's the purpose of  
3 notifying the employee of those reasons?

4 A: I don't know what the Act,  
5 what the reasons for the Act were.

6 Q: Well, what do you understand  
7 the purpose to be? Is it so in case  
8 there's issue, factual information that  
9 was missed, the employee has an  
10 opportunity to provide it then?

11 A: Yes, I would, yes, I would  
12 agree with that.

13 Q: And you said you just have no  
14 reason to explain why you didn't notify  
15 Mr. Johnson of that?

16 A: I do not, no.

17 Q: Did anything that Mr. Kent  
18 say to you have anything to do with your  
19 controversion or failing to notify Mr.  
20 Johnson of your controversion?

21 A: I probably discussed the  
22 issue with Mr. Kent. I would imagine I  
23 would have.

24 Q: And what did he say?

25 A: Not, again, not remembering,

1 I mean, totally remembering  
 2 conversations, I would assume that if I  
 3 sent the letter, if I sent a letter to  
 4 the Department of Labor that Mr. Kent  
 5 supported that decision to do that. May  
 6 I just state that the official of the  
 7 OWCP record is maintained by the Office  
 8 in Philadelphia. And when I allowed Mr.  
 9 Johnson and Mr. Dumas to look at the  
 10 record that I had on file in my office,  
 11 what that is is anything that I processed  
 12 to the Department of Labor, that was not  
 13 the official record. The official record  
 14 is maintained by the Department of Labor.

15 Q: Well what was your purpose in  
 16 wanting to clarify that?

17 A: I didn't have anything to  
 18 hide from the two gentlemen that were  
 19 asking for information.

20 Q: Okay. I'm just reviewing,  
 21 I'm on the, it might have been the  
 22 paragraph that we were on, December 13<sup>th</sup>  
 23 1999. Let me go through it here. Is  
 24 there, there was some mention in the  
 25 paragraph beginning "On or about December

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1 back to earlier testimony where I said  
 2 that's the employee's responsibility to  
 3 provide that medical documentation to  
 4 support his claim.

5 Q: Look at document, what's the  
 6 last one that I marked, 23. I'm going to  
 7 give you a document marked as Exhibit 24.  
 8 Does this document bear your signature?

9 A: Yes it does.

10 Q: And it's two thirds of the  
 11 way down the page under a signature of  
 12 witness, Joseph, is it R, Stuckey?

13 A: Yes.

14 Q: How, what was the purpose of  
 15 this document?

16 A: After several meetings with  
 17 Mr. Johnson and Mr. Dumas, and we had the  
 18 discussion concerning medical  
 19 documentation and the lack of submission  
 20 of that documentation. I think I, well I  
 21 know I asked Mr. Johnson to sign a  
 22 release of information from, for  
 23 Philhaven for his records so that I could  
 24 submit that with, I believe at this point  
 25 we were going to start and start to

1 13<sup>th</sup> 1999", that the controversion  
 2 decision is supposed to be a supervisor's  
 3 decision as opposed to your decision, is  
 4 that...

5 A: The agency representative.  
 6 An agency representative.

7 Q: Any agency representative?

8 A: That's what the law says.

9 Q: Now I'm in the last paragraph  
 10 on that page and you might have been  
 11 doing what I was doing too, it says,  
 12 "Indicated in the controversion letter  
 13 that I failed on several occasions to  
 14 provide him with the requested release of  
 15 information form." Did you, I'm looking  
 16 through the November 1<sup>st</sup> 1999 letter.  
 17 Did you ever say to Mr. Johnson in any  
 18 form that part of your decision was based  
 19 upon him not providing you with the  
 20 release of information form?

21 A: Yes, I'm, oh, I'm sorry. I  
 22 don't think I ever addressed the Release  
 23 of Information Form. I just addressed  
 24 the medical issue form. There was no  
 25 medical documentation. Again, I'll go

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1 submit the CA-2 form. Because it is  
 2 dated twelve twenty-eight.

3 Q: What did you do with this  
 4 form after Mr. Johnson signed it?

5 A: It was faxed over to  
 6 Philhaven for the release of his medical  
 7 records.

8 Q: Faxed by who, you?

9 A: Yes, I would assume it was  
 10 faxed by myself. I believe what actually  
 11 took place is that there was probably a  
 12 telephone conversation to someone at  
 13 Philhaven to request medical  
 14 documentation and then it looks like  
 15 Philhaven faxed this form to me,  
 16 completed it and faxed it to me for  
 17 signatures from Mr. Johnson and myself so  
 18 that we could get it back over to  
 19 Philhaven so that they could release his  
 20 documents.

21 Q: Now was that the same  
 22 information that was used for the CA-1?

23 A: This information was, this  
 24 was requesting all medical documentation  
 25 that Philhaven had on Mr. Johnson.

1 Q: You were requesting that  
2 Philhaven provide it to you?

3 A: Provide it to me for  
4 processing to the Department of Labor.

5 Q: Now why, I mean, before,  
6 here's you doing what you didn't do back  
7 in the CA-1, right?

8 A: Because of the actions and  
9 the confrontations that we had, not  
10 confrontations, but the discussions that  
11 Mr. Dumas and Mr. Johnson had with me,  
12 again, somewhere along the, I'm not sure  
13 if this, if I was contacted by Philhaven  
14 or if I contacted them or if this is what  
15 was necessary to process his, the claim  
16 to the Department of Labor. But  
17 somewhere along the line, Mr. Johnson was  
18 well aware that he needed medical  
19 documentation and Mr. Dumas, that they  
20 need medical documentation to submit with  
21 the CA-2. Somewhere, I'm not exactly  
22 sure at this point again, it's been a  
23 couple years, what transpired, but this  
24 form was needed by Philhaven to release  
25 those documents.

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1 took it over to the supervisor?

2 A: Absolutely not. Mr.  
3 Kiscadden's signature is at the bottom.  
4 The only way that you can get an  
5 electronic signature on that form is to  
6 fill it out, is to have the supervisor  
7 complete it under his codes. I can not  
8 sign for Mr. Kiscadden. If I were to  
9 have filled this form out, it would have  
10 my signature on it, electronic signature.

11 Q: But, how do you know that's  
12 an electronic signature? I mean there's  
13 all kinds of...

14 A: At number 37, because I know  
15 how the program works, because I had  
16 training in the ASSIST program and that  
17 is an electronic signature. That's  
18 directly related to the ASSIST program  
19 and the way this form's filled out.

20 Q: Well how about on the first  
21 page, that "See Attached" down at the  
22 bottom where it says "Witness Statement",  
23 is that electronic?

24 A: The name of the witness is  
25 submitted by Mr. Johnson at number 16.

1 Q: Okay, and they were really  
2 directed to you?

3 A: Yes, they were.

4 Q: And in doing that, in Mr.  
5 Johnson in that instance, signing that  
6 form and authorizing the release of that  
7 information to you, he had done  
8 everything that's required of him under  
9 the regulations or the rules governing  
10 the process, right?

11 A: Yes.

12 Q: One issue on the, I think it  
13 was Exhibit 18, yeah. You have that?

14 A: Yes.

15 Q: On the second page at item  
16 34, it states, "Does your knowledge of  
17 the facts about this injury agree with  
18 the statement that the employee and their  
19 witness?" And it says, "yes." So that,  
20 I mean why did you say, it's not, this is  
21 the form that's filled out, it's the  
22 second page of the CA-1 and it's the form  
23 that's completed by the supervisor.

24 A: Right.

25 Q: But you completed it and you

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1 Q: But then it says "See  
2 Attached."

3 A: I wrote that "See Attached"  
4 because I had a witness statement from  
5 Ms. Yiche.

6 Q: Okay, and up in the middle of  
7 the page there's an arrow that's pointing  
8 a signature from there, from the  
9 signature line down to another line. Is  
10 that, that's someone wrote in, right?

11 A: That's my arrow because Mr.  
12 Johnson signed the form at the wrong  
13 spot.

14 Q: And the handwriting typecode  
15 75700 or Source Code 0280?

16 A: That's my manual, that's  
17 codes that are used by the Department of  
18 Labor that I had to manually place onto  
19 the form prior to some of the software  
20 patches and the improvements to the  
21 ASSIST program which I don't have to do  
22 that any longer.

23 Q: But then over on the second  
24 page, I thought that earlier you had said  
25 that you actually took this over to Mr.



1 Kiscadden to get him to sign?

2 A: I took the, once Mr.

3 Kiscadden completed his portion, the  
4 Human Resources printer was the only one  
5 that was set up to take these forms off,  
6 out of the ASSIST program. So what, once  
7 Mr. Kiscadden completed his form, I had  
8 to manually print it out on the Human  
9 Resources printer and I hand-carried it  
10 over to Mr. Kiscadden to sign so that I  
11 could fax it over to the Department of  
12 Labor.

13 Q: And so that's his signature  
14 on the second page?

15 A: That is his written signature  
16 with the electronic signature code, "ES"  
17 in front of Kiscadden, signifying  
18 electronic signature.

19 Q: Okay. Were you trying to  
20 tell me before that that, the handwritten  
21 portion or what looks like handwritten  
22 was an electronic signature?

23 A: No, I was not. This portion  
24 here, where it says,  
25 "/ES/Kiscadden/Rodney", in front of his

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1 matter, right?

2 A: Yes.

3 Q: Where is this whole notion of  
4 you being the agency representative  
5 spelled out?

6 A: I guess it's unwritten,  
7 something unwritten because FECA doesn't  
8 determine what an agency, they might by  
9 definition determine what an agency  
10 representative is. I don't know what the  
11 agency representative definition for the  
12 Federal Employee's Compensation Act is.  
13 But I run the Workers' Compensation  
14 program at the facility. That's the job  
15 I was hired to do.

16 OSTROWSKI: Well the whole  
17 program contemplates the supervisor as  
18 being the representative of the agency,  
19 correct?

20 MERSHIMER: Object to the form of  
21 the question.

22 OSTROWSKI: I wouldn't agree with  
23 that, no. But this form, this second  
24 page of this report where it asks whether  
25 your knowledge of the fact about this

1 handwritten signature is an electronic  
2 signature code in the ASSIST program, run  
3 through DACP/VISTA. Sorry, if I implied  
4 that I did not mean that.

5 Q: Okay. But then, so at the  
6 time this signature, this form was signed  
7 by everybody, the statement was made that  
8 at number 34, "Does your knowledge of the  
9 facts about this injury agree with the  
10 statements of the employee and/or  
11 witness?" "Yes."

12 A: That was the form signed by  
13 Mr. Kiscadden, yes. He agreed to, the  
14 information that he had, that he had, was  
15 to the best of his knowledge true.

16 Q: And then it says at number  
17 35, "if the employee agency controverts  
18 continuation of pay, state the reason in  
19 detail." Nothing indicated there.

20 A: And again, this is the form  
21 that the supervisor would only have input  
22 and he did not controvert continuation of  
23 pay. I did as the agency representative.

24 Q: And you did that after having  
25 discussions with Mr. Kent about the

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1 injury agree with statements of the  
2 employee and asks if the employing agency  
3 controverts continuation of pay, state  
4 the reason in detail. That's all headed  
5 at the top, Official Supervisor's Report,  
6 correct?

7 A: Official Supervisor's Report,  
8 correct.

9 Q: I'm back to Exhibit 21, the  
10 May 25<sup>th</sup> 2000 letter, page 4 at the top  
11 it references, December 21, 1999, a  
12 meeting or encounter between yourself,  
13 Mr. Dumas, and Mr. Johnson, do you have a  
14 recollection of that?

15 A: Again, we had several  
16 meetings, I just assume that the dates  
17 are correct, without referencing any of  
18 my records.

19 Q: Now what, why was there a  
20 process then of having a CA-2 form  
21 prepared?

22 A: Mr. Dumas and Mr. Johnson  
23 demanded that a CA-2 be submitted and so  
24 we submitted the form.

25 Q: Had there been a denial of

1 the claim submitted under the CA-1?

2 A: I believe at this time there  
3 was. Again, without looking at my  
4 records I deem at this time the denial  
5 was already rendered by the Department of  
6 Labor.

7 Q: And on the second paragraph  
8 of that page, it references December 23,  
9 1999 telephone conversation between  
10 yourself and Mr. Johnson. Do you have a  
11 recollection of that?

12 A: I do have a recollection of  
13 what went on. Mr. Kiscadden was on  
14 annual leave. Initially it was thought  
15 that he was going to submit some  
16 information concerning some, some  
17 narrative concerning that and then after  
18 some discussion with myself, it was  
19 decided that I would submit a cover  
20 letter instead of him providing  
21 documentation. I would just submit a  
22 cover letter outlining that we have  
23 already filled out a CA-1 and that  
24 there's other information that went down  
25 with that CA-1 and that we were gonna be

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1 received from Philhaven there was some  
2 information in there that appears that  
3 Mr. Johnson had some issues prior to the  
4 claim for compensation and prior to the  
5 claim of the alleged injury that occurred  
6 with Mr. Erickson. Again, I just wanted  
7 to provide them with some additional  
8 information so that they could use the  
9 information to determine causal  
10 relationship between the injury that was  
11 alleged and the actual injury, or the  
12 actual claim.

13 Q: I mean, weren't you at this  
14 point, you were trying to get the claim  
15 denied.

16 A: There was a pre-existing  
17 condition, it appeared that there was a  
18 pre-existing condition that I was making  
19 the Department of Labor aware of.

20 OSTROWSKI: Here's a document  
21 that I don't have copies of, marked as  
22 Exhibit 26. In December 29<sup>th</sup> 1999 a  
23 letter to you from the Department of  
24 Labor, OWCP Claims Examiner. Why don't  
25 you just review it.

1 submitting the information along with the  
2 CA-2. The reason I wanted to do that was  
3 because they would give the CA-2 a new  
4 claim number. They would not give it the  
5 same claim number as the CA-1 and  
6 therefore all the information concerning  
7 the allegations and what went on, they  
8 would not have that unless we provided  
9 that. And I wanted to give them a  
10 snapshot of what we were providing as a  
11 CA-2.

12 Q: Okay. And did you provide,  
13 did you prepare a cover letter to submit  
14 with the CA-2?

15 A: Yes I did.

16 Q: I don't have a, I may need  
17 two copies of this. Document that I'm  
18 going to mark as Exhibit 25. Why did  
19 you, why did you prepare, why did you say  
20 in this letter, "it appeared as if Mr.  
21 Johnson had had psychiatric concerns that  
22 have been ongoing and are far beyond the  
23 scope of the alleged work-related  
24 incident."

25 A: Because in the notes I

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1 RODRIGUEZ: We're going to stop  
2 and suspend video in order to switch  
3 tapes.

4 OSTROWSKI: Okay.

5 RODRIGUEZ: The time now is 1:42  
6 camera time, 1:52 actual time.

7 RODRIGUEZ: Resuming the video  
8 recording. The time now is 1:43pm camera  
9 time, 1:58, 1:53pm actual time.

10 OSTROWSKI: This was shown to  
11 your counsel. Copy of what I marked as  
12 Exhibit 26. And then just for purposes  
13 of the record, that was a December 29,  
14 1999 letter?

15 STUCKEY: Yes, sir.

16 Q: And that's the transmittal  
17 letter for the CA-2 that was prepared and  
18 submitted, correct?

19 A: It's the cover letter that I  
20 submitted with the CA-2, yes.

21 Q: In that you're also making  
22 several recommendations as to reasons to  
23 deny Mr. Johnson's claim, correct?

24 A: Yes.

25 Q: And do you, is this whole

1 notion of you making recommendations, I  
2 mean we have this issue with this concept  
3 of controversion, which as I understand  
4 it, and correct me if I'm wrong, but as I  
5 understand it, it's something that  
6 applies to the CA-1 continuation of pay  
7 provision. Is that correct?

8 A: Yes, more than anything, yes.

9 Q: And does it have a purpose or  
10 effect beyond the continuation of pay?

11 A: Sure. Controver, the new  
12 software program allows for the, and uses  
13 the word dispute. Does the agency  
14 dispute the claim? So the new software  
15 program put in the wordage that  
16 previously was known as, perceived as,  
17 controverted.

18 Q: And does that new, did the  
19 regulations provide for the notion of  
20 disputing claims?

21 A: I'm not sure if it's listed  
22 in the Federal Employee's Compensation  
23 Act or not as a definition or as what  
24 outlines what can be disputed. Again, it  
25 could be perceived by agency personnel as

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1 December 29<sup>th</sup> 1999 submission that the  
2 events that happened on October 13<sup>th</sup> and  
3 18<sup>th</sup> did not happen?

4 A: No, by no means. Why, no.  
5 Why would I, all the reports were there,  
6 all the police reports were there. I'm  
7 not contending that they did not happen.

8 Q: And just clarify the basis of  
9 your dispute for me. Restate it in...

10 A: Again based, again, as the  
11 letter states, there's some  
12 inconsistencies as what was being said by  
13 the employee versus the person that was  
14 supposed to cause the situation, as well  
15 as witness statements, as well as the  
16 investigation reports and I was making  
17 the Department of Labor aware that there  
18 was some inconsistencies because this is  
19 going to be looked at as a new claim, by  
20 a new claims examiner. Same claims  
21 examiner will not look at this one that  
22 looked at the original one. It will be  
23 assigned to someone else.

24 Q: And before a decision, you  
25 make a decision, or before you take the

1 anything that they don't feel, anything  
2 that they feel with the claim that the  
3 Department of Labor needs to know about,  
4 needs to be made aware of. If you don't  
5 supply a lot of the information to the  
6 Department of Labor, as I said  
7 previously, they send another letter out  
8 to the employees as well as the agency  
9 requesting additional information. I've  
10 made it a practice to submit all this  
11 information up front so that they have a  
12 snapshot of what's going on and to let  
13 them decide whether or not they need more  
14 information. At this, this only speeds  
15 up the adjudication of the claims.  
16 Again, trying to look out for the  
17 employees because I don't feel that the  
18 employees should be an injured employee  
19 and not have money coming in,  
20 compensation coming in. And it takes  
21 long enough for the Department of Labor  
22 to adjudicate a claim. Just trying to  
23 speed up the process.

24 Q: So, are you, were you  
25 contending in your submission in the

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1 action of expressing your controversion  
2 or dispute of a claim, is that something  
3 that you review with Mr. Kent?

4 A: Not always, no.

5 Q: In this case, did you review  
6 those with Mr. Kent?

7 A: I believe I did. I believe  
8 we discussed it, yes. Because of all the  
9 information that was being transmitted  
10 back and forth between him and Mr.  
11 Snidely, and to make sure that we had as  
12 much factual information that we could  
13 provide the Department of Labor so that  
14 they could make a decision.

15 Q: And at the time of that  
16 December 29, 1999 letter, were you aware  
17 of Mr. Johnson's administrative  
18 complaints of discrimination?

19 A: I don't think I was at this  
20 time yet. No. That surfaces later when,  
21 after this claim was submitted when the  
22 claims examiner who was Ms. Roselyn  
23 Harris contacted my office and asked me  
24 if I was aware of the EEO allegations and  
25 I said I was not and I was not provided

1 with any information concerning the EEO.  
 2 And then I was, I think that's when, I  
 3 know that's when she sent me all the  
 4 information that was sent down to the  
 5 Department of Labor from Mr. Johnson, Mr.  
 6 Dumas, and it's listed in, the records  
 7 are in the CA-2 folder in big font so,  
 8 that's what I received from the  
 9 Department of Labor, outlining a whole  
 10 list, I believe there was twenty-some  
 11 allegations by Mr. Johnson concerning EEO  
 12 complaints.

13 Q: About your processing?

14 A: Actually, that was about  
 15 different individuals and different  
 16 things that happened at the facility.

17 Q: Okay, like what?

18 A: There was an incident where  
 19 an employee was alleged to have called,  
 20 told Mr. Johnson he was going to work his  
 21 black ass off or something to that  
 22 effect. There was some other incidents  
 23 concerning the job that he didn't get.  
 24 There were some incidents in there  
 25 listing the fact that the Federation of

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1 forms prepared and ready to be faxed to  
 2 the Department of Labor at this point, on  
 3 this date. I do know that I was going to  
 4 include Mr. Johnson's narrative because  
 5 that was important to the claim and  
 6 again, about Mr. Kiscadden's narrative,  
 7 again I'll refer back to the testimony I  
 8 gave earlier that after Mr. Kiscadden was  
 9 going to provide us with some narrative,  
 10 we had decided that we were, that I was  
 11 just going to provide a cover letter for,  
 12 to place on top of the CA-2 submission.

13 Q: But did the rules call for  
 14 the provision of narrative statement by  
 15 the supervisor?

16 A: I'm not sure what the CA, if  
 17 the CA-2 does necessitate a narrative by  
 18 the supervisor. You could look at a CA-2  
 19 if need be and down that list to see  
 20 what...

21 Q: Now, continuing on page 4 on  
 22 Exhibit 21, did you ever have the second  
 23 or the second to last paragraph. It  
 24 says, "Mr. Kent then made the derogatory  
 25 racial statement, We have done enough for

1 Government Employees did not do anything  
 2 to help Mr. Johnson's cause pertaining to  
 3 an EEO issue, there was an issue there  
 4 about, I'm trying to think of some  
 5 different ones. Mr. McCracken, again a  
 6 union representative, that did not do,  
 7 did not represent Mr. Johnson properly I  
 8 believe was the, there was a whole list  
 9 of allegations.

10 Q: Back to Exhibit 21, the March  
 11 25<sup>th</sup> 2000 letter. The, was there some,  
 12 do you recall there being, I'm in the  
 13 middle of a page, December 28<sup>th</sup>, 1999,  
 14 the issue of there being a narrative or  
 15 supposed to have been a narrative from  
 16 Mr. Kiscadden. Do you recall, well I'll  
 17 read on, it says, "When brought to Mr.  
 18 Stuckey's attention, he retrieved my  
 19 narrative from his desk drawer," drawel,  
 20 I think it should be drawer, "and then  
 21 stated, Oh I forgot to include it." Do  
 22 you recall that?

23 A: When Mr. Dumas and Mr.  
 24 Johnson came to my office, I'm not sure  
 25 if I was actually, if I actually had the

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1 you people and will do no more." Did you  
 2 ever hear that before? That that  
 3 statement was made?

4 A: No.

5 Q: This is the first you've ever  
 6 heard of any of that?

7 A: Yes.

8 Q: The, then the final paragraph  
 9 references a Charlene Szabo, S-Z-A-B-O?

10 A: Yes.

11 Q: Did you have, who is Ms.  
 12 Szabo?

13 A: Ms. Szabo is the Chief  
 14 Executive Office of the facility.

15 Q: And did you have any  
 16 conversations with Ms. Szabo about Lewis  
 17 Johnson?

18 A: I did not.

19 Q: Let me just look through my  
 20 documents here. I think I'm going to,  
 21 I'm about to wrap up with you. When was  
 22 the last time you spoke with Mr. Kent  
 23 about Lewis Johnson?

24 A: I have no idea. I mean when  
 25 the claim was moving forward, when the

1 CA-1 claim and the CA-2 claim were moving  
 2 forward, when Mr. Dumas and Mr. Johnson  
 3 would come to my office, Mr. Kent would  
 4 ask me occasionally how, you know what's  
 5 happening or what's going, or what has  
 6 the OWCP decided. After that period of  
 7 time when the claim was waiting for  
 8 adjudication by the Department of Labor,  
 9 Mr. Johnson and Mr. Dumas frequented my  
 10 office every two weeks to drop off any  
 11 additional medical documentation, the  
 12 C20's that they had and also to submit  
 13 the CA-8 forms for compensation, which if  
 14 you review the file, we, I think there  
 15 was, I don't know how many there were,  
 16 but we were submitting them every two  
 17 weeks to compensation. Compensation will  
 18 not pay out any of that money, any  
 19 compensation money until the claim is  
 20 adjudicated. However, we did submit the  
 21 claims because that's what Mr. Dumas and  
 22 Mr. Johnson had preferred, so that's what  
 23 we did, even though it was, again, as I  
 24 stated earlier in my testimony, it would  
 25 be probably best to wait until the end to

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1 to give the Department of Labor whatever  
 2 was demanded by Mr. Dumas. At this  
 3 point, we were requesting information  
 4 from Philhaven, once again, to process  
 5 his claim.  
 6 Q: And that was a month after  
 7 you submitted the claim though, right?  
 8 A: Again, Mr. Dumas and Mr.  
 9 Johnson were in my office pretty  
 10 continually for awhile.  
 11 Q: And in there you reference  
 12 the fact that you had a release of  
 13 information?  
 14 A: Yes.  
 15 Q: And what release of  
 16 information are you referring to?  
 17 A: The initial, we don't have it  
 18 here I don't think, it's not listed as  
 19 any exhibit. When, as part of the  
 20 process for reviewing the employee's  
 21 benefits at the beginning when we find  
 22 out that it's a lost time claim, or  
 23 there's going to be medical expenses  
 24 incurred, part of that process, I go over  
 25 the Federal Employee's Compensation Act

1 submit everything at one time. But I did  
 2 submit them forms for them every two  
 3 weeks. For Mr. Johnson every two weeks.  
 4 Q: What's the number of the last  
 5 document, number 26?  
 6 A: Yes.  
 7 Q: Here's a document marked as  
 8 Exhibit 27, again I have to make copies.  
 9 This is a November 30, 1999 letter from  
 10 you to Dr. Picolla at Philhaven. Take a  
 11 moment and review that.  
 12 A: Okay.  
 13 Q: Why did you prepare that  
 14 letter on November 30, 1999?  
 15 A: Mr. Johnson and Mr. Dumas  
 16 were visiting my office regularly, about  
 17 every week or so and Mr. Dumas was quite  
 18 demanding of things that he wanted for  
 19 myself to do to file Mr. Johnson's claim.  
 20 Although I felt that Mr. Dumas did not  
 21 know the workings of the Federal  
 22 Employee's Compensation Act and the  
 23 process that was necessary to file those  
 24 claims, and what took place, I made every  
 25 effort that I could make to provide and

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1 with the employee as well as the  
 2 responsibility of the employee. Again,  
 3 what they are entitled to do, what their  
 4 rights are, and I asked them to select a  
 5 physician at that point in time. When  
 6 the employee selects that physician, at  
 7 the bottom of that form is a statement  
 8 that says, "The employee hereby releases  
 9 all the information to the Human  
 10 Resources Management Office for  
 11 processing of his Workers' Compensation  
 12 claim to the Department of Labor."  
 13 That's the release of information that I  
 14 was referring to.  
 15 OSTROWSKI: That's all the  
 16 questions I have.  
 17 MERSHIMER: Okay, I have some  
 18 questions for you. Let's use this  
 19 Exhibit 26. Well this was the December  
 20 29, 1999 letter that you sent to the  
 21 Department of Labor claims examiner. Is  
 22 that correct?  
 23 STUCKEY: Yes. I'm sorry, yes.  
 24 Q: Now, and this I believe you  
 25 said was the cover letter that you sent



1 along with the CA-2 form?

2 A: Yes.

3 Q: Now you said you would  
4 provide as much information to the  
5 Department of Labor as possible so they  
6 could process claims quicker.

7 A: Yes.

8 Q: And that was to benefit the  
9 employee?

10 A: Yes.

11 Q: Now, you also would indicate  
12 to the Department of Labor if you felt  
13 that the claim, that the agency wanted to  
14 dispute the claim?

15 A: Yes.

16 Q: So the extent an agency  
17 disputes a claim, that's not to the  
18 benefit of the employee?

19 A: No, it's not.

20 Q: You were asked a question  
21 regarding an Exhibit 24. You on there?

22 A: Yes.

23 Q: Now Exhibit 24 is an  
24 Authorization for the Release of  
25 Information document.

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1 on by Mr. Johnson and Mr. Dumas, we  
2 changed gears, so to speak, and we  
3 actively went after that documentation.  
4 Mr. Johnson at that point was already  
5 reporting his pro, not his progress, but  
6 he was reporting that he had doctor's  
7 appointments on this date, on this date  
8 and this date and we should be receiving  
9 documentation from Philhaven. So, with  
10 that in mind, knowing the fact that we  
11 should be receiving something from  
12 Philhaven, we went after that information  
13 from Philhaven to process a CA-2 form,  
14 claim.

15 Q: And my question is, who, I  
16 understand then that you then actively  
17 sought this information. Who's  
18 obligation was it to provide the  
19 information to process the CA-2?

20 A: It's the employee's  
21 responsibility to provide medical  
22 documentation. It's stated, when we  
23 initially do the paperwork it's on the  
24 Notification of Employee's  
25 Responsibilities, it's listed there who's

1 A: Yes.

2 Q: It's got the stamp on it,  
3 it's right here.

4 A: Yes.

5 Q: Somewhere on page it says G-  
6 0422. And the signatures of your  
7 signature and Mr. Johnson's signature,  
8 dated December 28<sup>th</sup> 1999.

9 A: Yes.

10 Q: Now, I don't want to misstate  
11 any testimony, I'm just trying to make  
12 sure I understand it. I thought you were  
13 asked a question whether the, whether the  
14 signing of that release for Mr. Johnson  
15 would satisfy everything he had to do to  
16 provide information to process the CA-2?

17 A: Again, I will elude to  
18 Exhibit 27 which was the initial letter  
19 that went to Philhaven on November 30<sup>th</sup>.  
20 Somewhere along the line with the  
21 communication that was going on,  
22 Philhaven required a release of  
23 information signed by Mr. Johnson before  
24 they would release any information to me.  
25 Because of all the demands that were put

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1 responsibility it is.

2 Q: Okay, you've answered my  
3 question. Can you take a look at Exhibit  
4 21?

5 A: If I can find it. Yes.

6 Q: When was the first time you  
7 ever saw Exhibit 21?

8 A: Today.

9 Q: Now Mr. Johnson's CA-1 form  
10 was denied. Is that correct?

11 A: That's correct.

12 Q: By the Department of Labor?

13 A: Yes.

14 Q: And the Department of Labor  
15 denied the CA-2 form for Mr. Johnson?

16 A: Yes.

17 Q: If you had filed the CA-2  
18 form the very first time, let's say you  
19 hadn't file the CA-1 form, you just went  
20 straight to put the CA-2 form, would Mr.  
21 Johnson have been entitled to any  
22 continuation of pay anyway?

23 A: No.

24 Q: The agency disputed the CA-1  
25 form for Mr. Johnson. Is that correct?

1 A: Yes.

2 Q: And the agency disputed the  
3 CA-2 form for Mr. Johnson?

4 A: Yes.

5 Q: And did you have a role in  
6 disputing that?

7 A: Yes.

8 Q: Did you dispute either of  
9 those forms because of Mr. Johnson's  
10 race?

11 A: No, absolutely not.

12 Q: Did you dispute either of  
13 those forms because you wanted to  
14 retaliate against Mr. Johnson for filing  
15 an EEO complaint?

16 A: I had no reason, in fact I  
17 had no knowledge of him filing the EEO  
18 complaint and I had no reason to do that,  
19 no. These forms were filed prior to my  
20 notification, in fact like I said, my  
21 conversation with Mr. Irvin, and I don't  
22 recall exactly when those took place, but  
23 these forms were filed I believe well  
24 before that.

25 MERSHIMER: I don't have anything

1 further.

2 OSTROWKSI: Nor do I.

3 RODRIGUEZ: Suspending video  
4 operation, camera time is 2:07, actual  
5 time is 2:16.  
6

EXHIBIT D

EXHIBIT E

# **N O T I C E**

## **RECEIPT OF APPLICATIONS FOR THE POSITION OF**

**HOUSEKEEPING AID – Full-Time  
WG-3566-2**

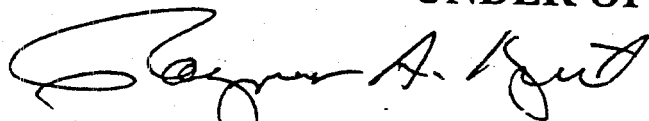
**6 am to 2:30 pm  
Monday through Friday  
Extended Care (19-3)**

**WILL CLOSE ON**

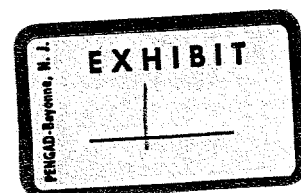
**JUNE 9, 1998**

**UNDER THE PROVISIONS OF THE OPEN AND  
CONTINUOUS VACANCY ANNOUNCEMENT AND THE  
VA/AFGE MASTER AGREEMENT.**

**CONTACT HUMAN RESOURCES, x4055 FOR APPLICATION  
UNDER OPEN CONTINUOUS**



**RAYMER A. KENT  
HUMAN RESOURCES MANAGER**





DEPARTMENT OF  
VETERANS AFFAIRS

## Memorandum

HUMAN RESOURCES

Date: July 8, 1998

JUL 15 1998

From: Personnel Management Specialist (N121)

VA MEDICAL CENTER  
LEBANON, PA 17042Subj: Certificate for position of Housekeeping Aid, WG-3566-2, Extended Care, 19-3, full-time  
6 am to 2:30 pm, Monday through Friday, OC 98-

To: ACOS for Extended Care (N500)

1. The candidates below are eligible for reassignment to the above position. Official personnel folders and other evaluation records are available for review. Supervisory appraisals are attached.

Employee's Name	Present Position
Barbara Keisch-white	Food Service Worker, WG-2
Luis Nazario-hispanic	Food Service Worker, WG-2
Deborah Dove-white	Food Service Worker, WG-2
Lewis Johnson-African-American	Housekeeping Aid, WG-2
Virginia Galebach-white HKA	Food Service Worker, WG-2
Deborah O'Donnell-white	Food Service Worker, WG-2
Keith Bender-white	Food Service Worker, WG-2
Ramon Adorno-hispanic	Food Service Worker, WG-2
Ronald Hull-white	Housekeeping Aid, WG-2

2. Please complete the endorsement below, indicating your action and return this certificate by 7-15-98

*Suzette A. Flashel Umlauf*  
SUZETTE A. FLASHEL UMLAUF

Attachments

End. 1

Date: 07.15.98

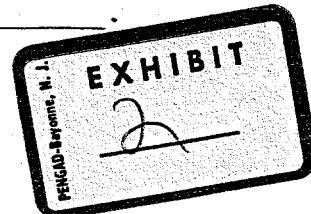
TO: Human Resources (N121)

I have selected

*Ronald Hull**accepts 7/15/98*

I would like to have the position filled on

Outside or other recruitment is requested.



*John E. Fidler*  
(Signature and Title)

G-0367

PG 1 OF 13

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(2) Written tests will not be used unless required or approved by the Civil Service Commission and/or Assistant Administrator for Personnel for in-service placement actions.

(3) When there are special placement factors which are not adequately covered by the minimum qualification standards and which are essential to successful performance in the position to be filled, they will be published in the promotion announcement as selective placement factors and, as such, will constitute a part of the minimum qualification standards for the position. Selective placement factors must comply with the provisions of FPM chapter 335, subchapter 3-5, and be approved by the Director or his designee.

c. EVALUATION PROCEDURES. Personnel Service will review the qualifications of each employee who applies for promotion consideration. If the employee meets the basic minimum qualifications as outlined in the promotion announcement, the rating will then be on the following criteria:

(1) Experience and Education. Experience and education may be used as an evaluation factor when there is a clear and positive relationship to the position to be filled. Credit can only be given for related experience and education that would qualify the employee for the position for which applied. The value to be assigned for experience and education is described in detail in Attachment "A" for nonsupervisory positions and Attachment "B" for supervisory positions.

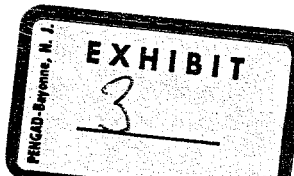
(2) Training, Self-Development, and Outside Activities. Pertinent training, self-development, and outside activities which would increase an employee's potential for effective performance in the position to be filled will be given appropriate credit.

(3) Appraisal of Performance. Supervisory appraisal or appraisals will be obtained on all candidates as follows:

(a) For nonsupervisory positions, VA Form 5-4667, Appraisal of Employee for Promotion to Nonsupervisory or First Level Supervisory Position, will be obtained.

(b) For first level supervisory positions, VA Forms 5-4667 and 5-4669, Qualifications Analysis and Assessment of Potential for Supervisory Positions, will be obtained.

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(c) For second or higher level supervisory positions, VA Forms 5-4668, Appraisal of Employee for Promotion to Supervisory Position Above First Level, and 5-4669 will be obtained.

Personnel officials, in conjunction with concerned operating officials, will establish the pattern of rating factors on the appraisal and assessment forms that is characteristic of the position to be filled prior to initiation of appraisal procedures. The candidate's immediate supervisor will rate the indicated factors on the appropriate forms and the ratings will be reviewed by the next higher level supervisor within the appropriate service. Differences in evaluation will be resolved before the forms are submitted. Appraisals of performance on VA Forms 5-4667, 5-4668, and 5-4669 WILL BE SHOWN to the employee prior to forwarding to the Personnel Office. The only exception to this requirement will be when an employee is on extended leave and it would delay the filling of a position. In these instances, the evaluation should be discussed with the employee immediately upon return to duty. An appraisal, performance and/or potential, will be used for a period of 90 days when the employee is being considered for a position having the same elements rated. However, if an employee has had a job change during this 90-day period, then a new appraisal form will be obtained.

(4) Awards-Achievement and Suggestion. To the extent feasible, an employee's participation in the awards program will be assessed in terms of demonstrated or implied initiative, resourcefulness, or planned ability as related to the requirements of the position to be filled. No point values will be assigned for awards.

#### REFERRAL AND SELECTION

(1) Upon completion of the evaluation and ranking process, the Personnel Office will certify alphabetically the names of the five highest ranking "Highly Qualified" candidates to the selecting official for final consideration. If there are more than five "Highly Qualified" candidates, then the five highest ranked candidates will be referred. An additional name will be added for each additional vacancy being filled. Should a referred candidate decline consideration after being interviewed, then the name of the next "Highly Qualified" candidate will be added to the original referral list.

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(2) All referred candidates will be interviewed by the selecting official. However, if a candidate is on extended leave and this would unduly delay the filling of the position, the selecting official may make a decision without interviewing the candidate. A notation to this effect must be made part of the selecting official's decision on the referral list. Candidates from other VA installations will not be required to report for interview unless they indicate a desire to do so at their own expense. It will be optional with the selecting official whether or not a candidate will be reinterviewed if referred and interviewed for an IDENTICAL position within a 90-day period. Such a candidate is considered for the position even though the interview is not required.

(3) The official personnel folders and all other pertinent records will be made available to the selecting official during the selection process.

(4) The selecting official will be the chief of service having the vacancy.

e. NOTIFICATION OF DECISION TO EMPLOYEES. After selection has been made, each employee who filed application for the position will be given the following information:

Whether or not the employee was found eligible on the basis of the minimum requirements specified in the promotion announcement; whether the employee was rated "Highly Qualified" or "Qualified;" whether or not the employee was in the group referred for selection consideration; the name of the individual selected for the job.

If an employee in the group referred for selection desires information as to the reason for nonselection, the selecting official will discuss with the employee the reasons for nonselection.

f. RELEASE OF EMPLOYEES. Employees selected for promotion will normally be released to a new assignment at the beginning of the first pay period following a minimum of at least 2 weeks from the date of selection. Where unusual circumstances justify a longer period, the employees will be promoted to the new assignment but detailed to their former position until they can be released. In these cases, the approval of the Director is required.

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10. TRAINING OF SUPERVISORS. Selecting officials will be responsible for developing basic supervisory training plans of at least a 40-hour duration for newly selected supervisors during their first 6 months in the new position. An additional 40 hours of supervisory training will be provided during the next 18 months. Specific training plans will be prepared outlining the training, and progress reports will be provided when training is completed. These records of training will be filed in official personnel folders. Training may be provided by any method to include on-the-job training, classroom training, assigned readings, attendance at Civil Service Commission and other supervisory courses, etc. Personnel Service will be responsible for insuring that training plans are developed within 30 days of an employee's entrance into a first-line supervisory position and will further follow-up to insure that training is accomplished and progress reports provided.

11. KEEPING EMPLOYEES INFORMED. Employees will be furnished a copy of this plan and are encouraged to seek the counsel of their supervisor and/or Personnel Office staff members concerning the following items:

- a. What jobs are in the employee's career ladder?
- b. What the employee can do to improve chances for promotion?
- c. What experience, education, or training would be useful or needed in meeting qualification requirements for higher level positions?
- d. What the employee may do if in a job with limited promotion opportunities?

All selections made under this plan will be announced in the Employee Bulletin which is published bimonthly and distributed to all employees.

12. PERIODIC REVIEW OF PLAN. A comprehensive review of this plan will be made at least annually, usually in the month of December. Service chiefs, supervisors, employees, and labor organizations are encouraged to submit suggestions, within the framework of Civil Service regulations, at any time for improvement of this policy. Any changes made in the plan will usually be published in January of each year. Suggestions should be submitted, in writing, to the Chief, Personnel Service.

13. GRIEVANCES. Employee grievances under the merit promotion program will be processed under the provisions of the standard



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VA grievance procedures. If an employee feels that either a specific action taken or the plan or local policy is unfair or improper, the procedures outlined in the VA grievance procedure should be followed. Employees may obtain specific information on filing a grievance from the Personnel Office, Building 1, Room 31.

14. REFERENCES:

MP-5, part I, chapter 335  
FPM chapter 335  
VA Employee Letter, "Merit Promotion Program"

15. RESCISSION:

✓ HM 00-75-15, 3-14-75, same subject, <sup>00-71-2</sup> October 4, 1971  
However, VA Employee Letter ~~00-59-2~~, dated ~~June 30, 1969~~,  
is still current and should be filed with this memorandum.

16. DATE OF COMPLETE REISSUANCE: September 1980 (05)

*Harry W. Flussi*  
HARRY W. FLUSSI  
Director

Attachments 2

DIST. "C" plus 150 copies to Personnel for new employees

G-0400

HM 90-77-52

September 15, 1977

Attachment A

MERIT PROMOTION RANKING PROCEDURENONSUPERVISORY POSITIONSI. EXPERIENCE

--Experience will be carefully evaluated as to quality and will be placed in one of three groups. "A" - High Quality; "B" - Very Good; and "C" - Acceptable. Examples of experience at the various levels will be filed with each promotion announcement and will be subject to review by candidates for promotion.

--Points will be assigned for appropriate experience as follows:

POINTS

--For meeting the minimum qualification requirements as outlined in the Promotion Announcement and appropriate Civil Service Qualification Standards:

NONE

--For each year above the minimum at the "A" level 3

--For each year above the minimum at the "B" level 2

--For each year above the minimum at the "C" level 1

--When excess experience is totaled for each level, full credit will be given on a month-by-month basis.

--Experience above the minimum will be credited providing it was acquired within 10 years of the closing date of the promotion announcement.

--Any employee may request the Personnel Office to fully explain the quality assignment given to their experience under the provisions of this promotion plan. They will be entitled to see the ranking sheet used in rating and ranking their experience. However, an employee CANNOT ask to see the ranking sheet of any other employee.

MAXIMUM POINTS IN THIS SECTION FOR EXPERIENCE IS: 30

II. SUPERVISORY APPRAISAL OF PERFORMANCE

--VA Form 5-4667 will be used for each special evaluation. Exception: unless one is on file dated within 90 days of

G-0401

A-1

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Attachment A

the date announcing the job vacancy and having the same elements rated.

--For each position to be filled, only the significant elements required for successful performance in that position will be identified. There should be no position requiring the rating of all elements on the appraisal forms.

--For each appropriate item a point value will be assigned as follows:

<u>Performance Level</u>	<u>Point Value</u>
A	0
B	10
C	20
D	30
E	40

If 75 percent of the required elements are rated "E" the supervisor preparing the evaluation will be required to attach a written justification giving specific examples of outstanding work for each element rated "E." However, if an employee has received an outstanding performance rating, quality increase, or superior performance award within the preceding 12 months, referral to such an award would be sufficient.

MAXIMUM POINTS IN THIS SECTION FOR SUPERVISORY APPRAISAL IS: 40

### III. EDUCATION AND TRAINING

--Additional credit will be granted for education and/or training as follows, providing such education and training was not used to initially qualify for the position. To be creditable, the education and/or training must be of value in better qualifying the candidate for the position for which applying and must have been acquired within the last 10 years.

--For each completed pertinent course totaling 3 semester hours or equivalent beyond the high school level: 1 POINT

--For each 3 clock hours of attendance at lectures, seminars and other verifiable training which is directly related and pertinent to the position and line of work of position for which applying: 1/8 POINT

G-0402

A-2

HM 00-77-52, 9-15-77

Attachment A

--Evidence of attendance must be submitted to the Personnel Office. No credit will be given for on-duty training where management has the right to determine and select who will attend.

--Education and training is defined as self-development activities which employees do on their own for their own development, based on desire to learn, improve and advance their career.

--It is the employee's responsibility to provide evidence to document completion of education and training programs. This can be accomplished by permitting the Personnel Office to verify training records or by providing a copy for filing in the official personnel folder.

MAXIMUM POINTS IN THE SECTION FOR EDUCATION AND TRAINING: 10

IV. GROUPING AND RANKING

--The grouping and ranking of general schedule and wage grade candidates will be accomplished as follows:

--All eligibles will be placed in one of two groups: "Highly Qualified" or "Qualified."

--Eligibles will be ranked according to the score obtained by totaling points earned under Sections I, II, and III.

--If five eligibles or less attain a rating of 30 or more, all in this group will be identified as "Highly Qualified."

--If more than five eligibles attain a rating of 30 or more, the five eligibles receiving the highest scores will be identified as "Highly Qualified." All other eligibles will be identified as "Qualified."

G-0403

VETERANS ADMINISTRATION HOSPITAL 595  
Lebanon, Pennsylvania 17042

HOSPITAL MEMORANDUM 00-75-02  
05-14

September 15, 1977

### MERIT PROMOTION POLICY

1. PURPOSE: To set forth policies and procedures for filling noncentralized positions in the competitive service at this facility. Excepted positions, such as physician, dentist, nurse, and nurse anesthetist, are not covered by these procedures. This plan does not apply to Canteen employees. However, the filling of certain noncentralized positions such as assistant service chiefs requires VA Central Office concurrence before final promotion action may be taken. This plan does not cover positions which are not included in a unit of recognition under the Federal Service Labor Management Relations Statute. These positions are covered under a separate plan.

### 2. POLICY

a. Selection for promotion and reassignment or detail to positions with known promotion potential will be made without regard to age, race, creed, color, religion, national origin, political belief, sex, nondisqualifying physical handicap, marital status, or membership or nonmembership in a labor organization.

b. Selecting officials and others engaged in the promotion process will make certain that nepotism, favoritism, or preselection are not involved in any promotion action taken under this plan.

c. This plan does not restrict management's authority to fill positions by means other than promotion, such as reassignment, appointment, transfer, demotion, or reinstatement, or to change at any time from one method to another or to use any combination of methods.

### 3. RESPONSIBILITY

a. Operating officials and supervisors are responsible for:

(1) Assisting in the development of promotion plans, evaluation of guidelines, and rating criteria.

(2) Explaining the promotion program to employees.

(3) Assisting employees in their development by counseling, guidance, and training.

(4) Preparing objective evaluations of employees and discussing the evaluations of past performance with the employee concerned. The only exception to the discussion of evaluations of performance with employees will be when the employee is on extended leave and it would delay

copy forwarded VACO (054) 9-26-77

G-0390

EXHIBIT



HM 00-77-52, 9-15-77

the filling of a position. In these instances, the evaluation should be discussed with the employee immediately upon return to duty.

(5) Insuring that employees who they supervise are informed of promotion opportunities and submitting the names of absent employees for consideration when the employee has indicated an interest in the position to be filled.

(6) Applying careful and objective judgment in the selection process.

b. The Chief, Personnel Service, will:

(1) Provide general administration of the promotion plan.

(2) Participate with operating officials in carrying out the requirements of this policy and in establishing and applying the evaluation methods.

(3) Determine the eligibility of applicants.

(4) Remind employees of their responsibility to furnish information regarding current qualifications.

(5) Inform all employees at least annually concerning the acceptance of voluntary applications at other VA hospitals.

c. Employees are responsible for furnishing information to update their qualifications records, for submitting applications for promotion consideration on a timely basis, and for advising supervisors of the positions in which they are interested in the event such position vacancies are announced during their absence.

4. POSITIONS COVERED BY THE PLAN. All General Schedule and Wage System positions at this health care facility are covered except for the following category: positions centralized to the Administrator or the Chief Medical Director and positions in the "Excepted" Service; i.e., Title 38 and Canteen Service positions. (\*\*)

5. CAREER PROMOTIONS. Career promotion is the promotion of an employee without announcement of the vacancy and processing under competitive promotion procedures if the employee was initially selected from a Civil Service register or by competitive promo-

(\*\*) Also excluded are positions which are not included in a unit of recognition under the Federal Service Labor Management Relations Statute; i.e., positions which are supervisory or managerial in nature, involve personnel work of other than a clerical nature, or other sensitive positions which are excluded from the units of recognition.

G-0391

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tion procedures and the fact that the initial selection could lead to promotion was made known to all potential candidates. Such career promotions, as defined in Federal Personnel Manual 335, may be made of employees assigned as follows:

a. Career ladder positions. These will include:

Clerk DMT, GS-2/3/4	Medical Technician, GS-4/5/6
Clerk Stenographer, GS-3/4	Medical Technologist, GS-5/7
Clerk Typist, GS-2/3	Messenger/Mail Clerk, GS-2/3
Corrective Therapist, GS-6/8	Nursing Assistant, GS-2/4
Dietitian, GS-5/9	Occupational Therapist, GS-6/8
Food Service Worker, WG-1/2	Pharmacist, GS-9/11
Housekeeping Aid, WG-1/2	Physical Therapist, GS-6/8
Laundry Worker, WG-1/2	Psychologist, GS-11/13
Licensed Practical Nurse, GS-3/5	Recreation Therapist, GS-6/8
Manual Arts Therapist, GS-6/8	Rehabilitation Technician,
Medical Aid, (Sterile Supplies),	(Alcohol), GS-4/6
GS-2/3	Social Worker, GS-9/11
Medical Radiology Technician,	Telephone Operator, GS-2/3
GS-4/5	

b. Trainee position

c. Apprentice position

d. Understudy position

e. Position filled below the established grade level

f. Training or Executive Development agreements

g. Position which is reconstituted in a higher grade

6. EXCEPTIONS FROM THE PLAN. Provided the incumbent meets legal and other requirements, promotion as an exception to competitive promotion procedures may be authorized under the following conditions:

a. Promotion to positions upgraded without significant change in duties and responsibilities on the basis of either a new classification standard or the correction of a classification error.

b. Repromotion to a grade or position from which employees were demoted in the VA without personal cause, and not at their request. Promotion under this provision may also be made to intervening grades.

c. Position change in a reduction-in-force which results in an employee receiving a higher pay rate because of pay-

HM 00-77-52, 9-15-77

fixing policy

d. A temporary promotion limited to 120 days or less

e. Promotion of an employee exercising reemployment rights or restoration rights after military service when the old position was upgraded during an individual employee's absence

f. Promotion of an employee who failed to receive proper consideration in a previous promotion action

g. Promotions resulting from additional duties and responsibilities accruing to a position in which the incumbent continues to perform the same basic function when such addition was not due to planned management action. In these cases, full documentation must be made part of the promotion action.

7. AREA OF CONSIDERATION

a. For all positions, the minimum area of consideration will be this hospital.

b. Voluntary applications for the specific position to be filled which are received from VA employees at other installations will be included in the minimum area of consideration. Additionally, supervisory referrals by VA Central Office program officials will be considered with others from within the minimum area.

c. Employees applying for vacancies at other VA facilities, as a result of extending their area of consideration, will be required to submit a current SF-171, Personal Qualifications Statement. The employee should describe on the SF-171, in a comprehensive manner, all present and past experience, education, training, awards, self-development and outside activities. The employee should submit this completed form to the local Personnel Officer in sufficient time to insure referral to the facility where a vacancy exists prior to the closing date specified in the announcement. Local Personnel staff will provide advice and assistance in the proper completion of the SF-171 to assure that all relevant information is shown. The Personnel Office will secure appropriate supervisory appraisals to forward along with the employee's application. Official personnel folders will not be forwarded to other facilities or requested except in very unusual circumstances. Use of official personnel folders after serving the purpose will be returned within 5 workdays after receipt.

G-0393

HM 00-77-52, 9-15-77

8. EXTENDING THE AREA OF CONSIDERATION. The area of consideration will not be extended when there are two "Highly Qualified" candidates available in the minimum area. An essential consideration for extending the minimum area of consideration must be a bona fide interest in seeking additional "Highly Qualified" candidates. When such additional candidates are desired, the area of consideration will be extended as follows:

a. For grades GS-6 and below, the extension may be limited to the commuting area.

b. For grades GS-7 and above, the area will be systematically extended; i.e., statewide, regionwide, and/or nationwide, until a sufficient number of "Highly Qualified" candidates are obtained. A sufficient number will be considered no more than five. For positions of assistant chiefs of services, the area of consideration will be nationwide and will include referrals of eligible candidates from the management personnel inventory file.

## 9. PROCEDURES

### a. METHOD OF LOCATING CANDIDATES

(1) Promotion opportunities will be announced by publishing a "Promotion Vacancy Announcement" and posting on official bulletin boards for a minimum of 7 calendar days. Official bulletin boards are located as follows:

Elevator lobby	-	Ground floor, Building 1
Main Corridor	-	First floor, Building 17
Elevator lobby	-	First floor, Building 18
Elevator lobby	-	First floor, Building 2
Lobby area	-	First floor, Building 19
Corridor	-	Entrance to Canteen, Building 22

In addition, copies will be forwarded to all services and three copies will be provided to any employee organization having exclusive recognition at the hospital. The deadline for applying will be specified in each announcement; however, it will always be posted for a minimum of 7 calendar days.

(2) To be considered for an advertised vacancy, employees will be required to apply by submitting VA Form 5-4078, Application for Promotion or Reassignment, before the closing date of the promotion announcement. The bottom portion of the form will be completed by Personnel Service and will indicate if the employee is qualified and

HM 00-77-52, 9-15-77

will be included in the group of employees to be evaluated for the position. If the employee is not qualified, Personnel Service will check the application form in the appropriate block indicating the reason for not qualifying and return it to the employee.

(3) Immediate supervisors will be responsible for insuring that employees absent on leave during the entire period for which the announcement is posted are nominated for consideration.

(4) The Personnel Office will enter into the competition the names of any qualified employees with restoration rights who are currently in the military service.

(5) Concurrent and equal consideration will be given applications voluntarily submitted by VA employees at other installations.

(6) Entrance Level Positions. A current listing of entrance level positions will be posted on all official bulletin boards so that interested employees may apply at any time for consideration for any of these positions through noncompetitive action. Each time this listing is revised, it will be coordinated with the union. Any employee applying for consideration for an entrance level position will be given consideration for the first position that becomes vacant providing the minimum qualification requirements are met for the entrance level position for which applied.

b. QUALIFICATION REQUIREMENTS

(1) All candidates must meet the minimum requirements of qualification standards established for the position by the VA or Civil Service Commission. For wage grade positions, all candidates must meet the qualifying screen-out element in CSC Handbook 115C, "Ability To Do The Job." If employees do not meet this requirement, they will be rated ineligible. If wage grade employees meet this requirement, then they will be rated and ranked for promotion consideration using the same procedures established for general schedule nonsupervisory or supervisory positions. An employee's service or time-in-grade must satisfy any promotion requirement established by law or regulation. All qualification standards and information on requirements are available in the Personnel Service for review.

G-0395



Housekeeping Aid, U.S. - 3566-2

(19-3)

OC 98-38

12

Lewis

11

11

refer

9

8

8

8

8

8

---

6

Tom Law

Francis (M. Uffner)

Myrtle A. Fleschel Uffner

7/2/98



HKA WG - 2  
EOD 2/21/93

## INSERVICE PLACEMENT RATING SHEET FOR WAGE SYSTEM JOBS

MPG ANT - Complete all items below if the Job Element procedure described in OPM Handbook X-118C is being followed. If the KSAO Item procedure is used instead, complete ONLY the REVERSE SIDE of this form.

NAME OF EMPLOYEE

POSITION APPLIED FOR (Title, series, grade)

ANNOUNCEMENT NO.

HOUSEKEEPING AID, WG-3566-2

OC 98-38

8 ELEMENTS (See crediting plan for more information about each element)

CHECK THE CATEGORY which best indicates the employee's capability based on how his/her total background relates to the quality levels for each job element.

SOURCE OF INFORMATION (e.g., SF 171, Item 21A; VA Form 5-4676a, Item 5; Award, February 1983, etc.)

POINT VALUE

SUPERIOR

SATISFACTORY

ACCEPTABLE

WEAK BUT OF SOME VALUE

OF NO VALUE

4 pts.

3 pts.

2 pts.

1 pt.

0 pts.

SCREENOUT

knowledge of proper cleaning procedures and proper uses of a variety of cleaning and sanitizing solutions

5

knowledge of housekeeping procedures required in isolation environments.

3

ability to work safely.

4

REMARKS

TOTAL POINTS

12

QUALIFIED

☐ AT LEAST 2 PTS. ON SCREENOUT ELEMENT

☒ TOTAL SCORE = 2 X NUMBER OF ELEMENTS OR BETTER

NOT QUALIFIED

☐ LESS THAN 2 PTS. ON SCREENOUT

☐ TOTAL SCORE LESS THAN 2 X NUMBER OF ELEMENTS

HIGHEST QUALITY FIGURE (Lowest score which indicates high quality for this vacancy)

POINTS

SIGNATURE OF SME PANEL MEMBER

DATE

SIGNATURE OF SME PANEL MEMBER

DATE

SIGNATURE OF SME PANEL MEMBER

DATE

SIGNATURE OF SME PANEL MEMBER

DATE

EOI 10/24/9  
WG 2 HKA



## INSERVICE PLACEMENT RATING SHEET FOR WAGE SYSTEM JOBS

NAME	EMPLOYEE	POSITION APPLIED FOR (Title, series, grade)	ANNOUNCEMENT NO.
		HOUSEKEEPING AID. WG-3566-2	OC 98-38

JOB ELEMENTS (See Creditting plan for more information about each element)		CHECK THE CATEGORY which best indicates the employee's capability based on how his/her total background relates to the quality levels for each job element.					SOURCE OF INFORMATION (e.g., SF 171, Item 21A; VA Form 5-4676a, Item 5; Award, February 1983, etc.)	POINT VALUE
		SU- PERIOR 4 pts.	SATIS- FACTORY 3 pts.	ACCEPT- ABLE 2 pts.	WEAK BUT OF SOME VALUE 1 pt.	OF NO VALUE 0 pts.		
SCREENOUT)								
Knowledge of proper cleaning procedures and proper uses of a variety of cleaning and sanitizing solutions.								4
Knowledge of housekeeping procedures required in isolation environments.								3
Ability to work safely.								4
REMARKS						TOTAL POINTS		11
						QUALIFIED <input type="checkbox"/> AT LEAST 2 PTS. ON SCREENOUT ELEMENT <input checked="" type="checkbox"/> TOTAL SCORE ≥ 2 X NUMBER OF ELEMENTS OR BETTER NOT QUALIFIED <input type="checkbox"/> LESS THAN 2 PTS. ON SCREENOUT <input type="checkbox"/> TOTAL SCORE LESS THAN 2 X NUMBER OF ELEMENTS		
HIGH QUALITY FIGURE (Lowest score which indicates high quality for this vacancy)						POINTS		
SIGNATURE OF SME PANEL MEMBER		DATE	SIGNATURE OF SME PANEL MEMBER		DATE			
Dorothy A. Flashed Umlauf		7/2/98	Tom Long		7/2/98			
SIGNATURE OF SME PANEL MEMBER		DATE	SIGNATURE OF SME PANEL MEMBER		DATE			
			Francis M. [Signature]		7/2/98			

# Interviews Paper

Johnson

Hull

KSAO Sup 9

KSAO Sup 9

1-5 Supplemental 4

Supplemental 5

1-5 Float observations 4

Float observations 5

17

19

Broken curtain rod.  
initiated work order.

Selected from Hull.  
Human Resources notified.



G-0365

Housekeeping Aid, U.S. - 3566-2  
(19-3) OC 98-38

12

Lewis

11

11

refer

9

8

8

8

8

8

6

Tom Lang  
Francis (M) Uffner  
Supt. A. J. Kishel Uffner  
7/2/98





EOD 10/24/98  
WG 2 HKA

## INSERVICE PLACEMENT RATING SHEET FOR WAGE SYSTEM JOBS

IMPORTANT - Complete all items below if the Job Element procedure described in OPM Handbook X-118C is being followed. If the KSAO alternative procedure is used instead, complete ONLY the REVERSE SIDE of this form.

NAME OF EMPLOYEE

POSITION APPLIED FOR (Title, series, grade)

HOUSEKEEPING AID, WG-3566-2

ANNOUNCEMENT NO.

OC 98-38

JOB ELEMENTS (See training plan for more information about each element)

CHECK THE CATEGORY which best indicates the employee's capability based on how his/her total background relates to the quality levels for each job element.

SOURCE OF INFORMATION (e.g., SF 171, Item 21A; VA Form 5-4676a, Item 5; Award, February 1983, etc.)

POINT VALUE

SCREENOUT)

Knowledge of proper cleaning procedures and proper uses of a variety of cleaning and sanitizing solutions

Knowledge of housekeeping procedures required in isolation environments.

Ability to work safely.

4

3

4

REMARKS

TOTAL POINTS

11

QUALIFIED

☐ AT LEAST 2 PTS. ON SCREENOUT ELEMENT☒ TOTAL SCORE = 2 X NUMBER OF ELEMENTS OR BETTER

NOT QUALIFIED

☐ LESS THAN 2 PTS. ON SCREENOUT☐ TOTAL SCORE LESS THAN 2 X NUMBER OF ELEMENTS

QUALITY FIGURE (Lowest score which indicates high quality for this vacancy)

POINTS

NATURE OF SME PANEL MEMBER

Dr. A. Flashel Umlauf

DATE

7/2/98

SIGNATURE OF SME PANEL MEMBER

Tom Lore

DATE

7/2/98

NATURE OF SME PANEL MEMBER

Francis M. Uffner

DATE

7/2/98

SIGNATURE OF SME PANEL MEMBER

Francis M. Uffner

DATE

7/2/98

Suzette

Standard Form 57  
U.S. Office of Personnel Management  
FPM Supp. 296-11, Sheet 3

## REQUEST FOR PERSONNEL ACTION

1. Action Requested

Recruitment

2. Request Number  
98-22

3. For Additional Information Call (Name and Telephone Number)

Donna Moore, Secretary, Extended Care (N500)

4. Proposed Effective Date

5. Action Requested By (Typed Name, Title, Signature, and Request Date)

Beulah Hadrick, R.N.

Clinical Manager for Extended Care

Beulah Hadrick

6. Action Authorized By (Typed Name, title, signature, and Concurrence Date)

Scott T. Shreve, D.O.

ACOS for Extended Care

Scott T. Shreve (see attached email)

PART B - Extension of SF 50 (For only code in 4351 Supplement 1977. Show all dates in month-day-year order)

1. Name (Last, First, Middle)

HULL, Ronald A.

2. Social Security Number

204-44-6208

3. Date of Birth

12-1-53

4. Effective Date

6-7-98

FIRST ACTION

5-A. Code

5-B. Nature of Action

Reassignment Promotion

5-C. Code

5-D. Legal Authority

Rea. 307.103

5-E. Code

5-F. Legal Authority

SECOND ACTION

6-A. Code

781

6-B. Nature of Action

Change in work schedule

6-C. Code

UXM

6-D. Legal Authority

5 USC 6101 #158

6-E. Code

6-F. Legal Authority

7. FROM: Position Title and Number

H 104  
Housekeeping Aid  
Perm PT

7. TO: Position Title and Number

H 104  
Housekeeping Aid  
2736A FT Perm.

8. Pay Plan

WG

9. One Code

3766

10. Grade or Level

1

11. Step or Rate

2

12. Total Salary

9.35

13. Pay Basis

PH

12A. Basic Pay

9.35

12B. Locality Adj

0

12C. Adv. Basic Pay

9.35

12D. Other Pay

0

16. Pay Plan

WG

17. One Code

3566

18. Grade or Level

02

19. Step or Rate

01

20. Total Salary/Amount

9.07

21. Pay Basis

PH

14. Name and Location of Position's Organization

Ems.  
Operations  
32 West 4  
PT

14. Name and Location of Position's Organization

Comp 860  
Department of Veterans Affairs Medical Center  
Extended Care  
Lebanon, PA 17042

Ems.  
EXTENDED CARE

23. Veterans Preference

3

1 - None

2 - 5 Point

3 - 10 Point

4 - 15 Point

5 - 10 Point/Other

6 - 10 Point/Comparable/30%

24. Tenure

2

0 - None

1 - Permanent

2 - Conditional

3 - Indefinite

25. Age

36

26. Veterans Preference for RIF

☐ YES ☒ NO

27. FEGLI

C

28. Annuitant Indicator

FT

29. Pay Rate Determinant

33. Part-Time Hours Per

30. Retirement Plan

K

31. Service Comp. Date (Leave)

10-3-81

32. Work Schedule

FT

33. Part-Time Hours Per

34. Position Occupied

2

1 - Competitive Service

2 - Excepted Service

3 - SES General

4 - SES Career Reserved

35. FLSA Category

N

E - Excepted

N - Nonexcepted

36. Appropriation Code

37. Bargaining Unit Status

38. Duty Station Code

595

39. Duty Station (City - County - State or Overseas Location)

Lebanon, Lebanon County, Pennsylvania

40. AGENCY DATA

LA POS.

41. NEW POSITION

42. REGRADED POSITION

43. VICE

44. QUALIFICATION STANDARDS USED

45. EDUCATIONAL LEVEL

46. YR. DEGREE ATTAINED

47. Academic Discipline

48. FUNCTIONAL CLASS

49. CITIZENSHIP

1-USA & OTHER

50. Veteran

Y-YE

EXHIBIT

7

PAGE 1 - REQUEST FOR PERSONNEL ACTION (SF 50) - (For use by the requesting office)

1. Office/Function

Initials/Signature

Date

Office/Function

Initials/Signature

A. Position

Authorized

D. English Language

Proficiency

B. Classification

G-0368

E. Drug Testing

Position

☐ YES

☐ NO

C. Placement

F. Coled 1/1/98

12/21

2. Approval: I certify that the information entered on this form is accurate and that the proposed action is in compliance with statutory and regulatory requirements.

Signature

RAYMER A. KENT

MANAGER

Approval Date

CONTINUED ON REVERSE

52-118

OVER

HUMAN RESOURCES

2/3 P. 2/3

NOV 29 1999 12:00PM

RETURN TO HUMAN RESOURCES  
2121 NLT 6-16-98

Department of Veterans Affairs

SUPERVISORY APPRAISAL OF EMPLOYEE FOR PROMOTION

SPECIALIZED CATEGORY APPRAISAL WITH NARRATIVE

EMPLOYEE NAME: **LEWIS Johnson**  
 PRESENT POSITION AND GRADE: **HKA WG-2**  
 POSITION APPLIED FOR (title and grade): **HOUSEKEEPING AID, WG-3566-2**  
 CURRENT ORGANIZATION: **EMS - OPERATIONS**  
 ORGANIZATIONAL LOCATION OF POSITION: **Extended Care - 19-3**

INSTRUCTIONS: The information furnished on this form will be important in determining the degree to which the employee possesses the Knowledge, Skills, Abilities, and Other characteristics (KSAs) and/or reviewer will indicate beside the Rating Factor (KSAO) or Job Element listed in Column I, the number of the Category Rating (1 to 5) which best describes the employee's performance with respect to the Rating Factor (KSAO) or Job Element. If the employee's current job does not include any of the KSAs in the Rating Factor or Job Element, then the employee's performance in them has not been observed, mark "0". In Column III, for each Rating Factor or Job Element,

CATEGORY RATINGS

- |   |  |
|---|--|
| <p>1 Employee's performance exceeds expectations to such an extent that it warrants special mention for placement consideration.</p> <p>2 Employee has demonstrated the Rating Factor (KSAO) or Job Element to a degree that is clearly above that expected of a fully competent employee and you would expect the employee to display the same degree of ability in the position applied for.</p> <p>3 Employee has demonstrated the Rating Factor (KSAO) or Job Element to the full extent expected of a thoroughly competent employee and you would recommend the employee with confidence for another position in which the Rating Factor (KSAO) or Job Element is important.</p> | <p>2 Employee's performance relative to the Rating Factor (KSAO) or Job Element is acceptable but you would have some reservations about recommending the employee for another position in which the Rating Factor (KSAO) or Job Element is important.</p> <p>1 Employee's performance relative to the Rating Factor (KSAO) or Job Element exhibits some definite weaknesses.</p> <p>0 Unable to appraise. (When this category is used, the reasons - e.g., current job does not include the KSAO's in this Rating Factor or Job Element.)</p> |
|---|--|

RATING FACTOR (KSAO) OR JOB ELEMENT COLUMN I	CATEGORY COLUMN II	NARRATIVE: Specific examples of what the employee has or has not done to cause me to award this rating. COLUMN III
1. Knowledge of proper cleaning procedures and proper uses of a variety of cleaning and sanitizing solutions.	3	Mr. Johnson has been trained according to established procedures outlined in EMS procedure manual.
2. Knowledge of housekeeping procedures required in isolation environments.	3	Trained according to procedure #15, Isolation cleaning.



G-0374



RETURN TO HUMAN RESOURCES  
N121 NLT 6-16-98

Department of Veterans Affairs

## SUPERVISORY APPRAISAL OF EMPLOYEE FOR PROMOTION

## SPECIALIZED CATEGORY APPRAISAL WITH NARRATIVE

EMPLOYEE  
NAME: *LEWIS Johnson*PRESENT POSITION AND GRADE  
POSITION: *HKA WG-2*

CURRENT ORGANIZATION

*EMS - Operations*

APPROPRIATE NO.

HOUSEKEEPING AID, WG-3566-2

NO: 98-38

HOUSEKEEPING AID, WG-3566-2

ORGANIZATIONAL LOCATION OF POSITION  
*Extended Care - 19-3*

INSTRUCTIONS: The information furnished on this form will be important in determining the degree to which the employee possesses the Knowledge, Skills, Abilities, and Other characteristics (KSAs) which are required for performance in the position being filled. In Column II below, the supervisor number of the Category Rating (R) to S) which best describes the employee's performance with respect to the Rating Factor (KSAO) or Job Element. If the employee's current job does not include any of the KSAs in the Rating Factor or Job Element unit, therefore, performance in them has not been observed, mark "0". In Column III, for each Rating Factor or Job Element,

give specific examples which show how the employee's performance justifies the Category Rating assigned. If more space is required, use additional sheets of paper and include the name of the supervisor at the top of each sheet and identify the appropriate Rating Factor or Job Element. **NOTE:** This form may be used for comments by the supervisor followed by those of the reviewer or separate forms may be used for each. If separate forms are used for the supervisor and the reviewer, the supervisor's appraisal should be made available to the reviewer during the review process.

## CATEGORY RATINGS

- 5 Employee's performance exceeds expectations to such an extent that it warrants special mention for placement consideration.
- 4 Employee has demonstrated the Rating Factor (KSAO) or Job Element to a degree that is clearly above that expected of a fully competent employee and you would expect the employee to display the same degree of ability in the position applied for.
- 3 Employee has demonstrated the Rating Factor (KSAO) or Job Element to the full extent expected of a thoroughly competent employee and you would recommend the employee with confidence for another position in which the Rating Factor (KSAO) or Job Element is important.

- 2 Employee's performance relative to the Rating Factor (KSAO) or Job Element is acceptable but you would have some reservations about recommending the employee for another position in which the Rating Factor (KSAO) or Job Element is important.
- 1 Employee's performance relative to the Rating Factor (KSAO) or Job Element exhibits some definite weaknesses.
- 0 Unable to appraise. (When this category is used, cite reasons - e.g., current job does not include the KSAO's in this Rating Factor or Job Element.)

RATING FACTOR (KSAO) ON JOB ELEMENT		COLUMN II CATEGORY	COLUMN III NARRATIVE: Specific examples of what the employee has or has not done to cause me to award this rating.
1. Knowledge of proper cleaning procedures and proper uses of a variety of cleaning and sanitizing solutions.		3	<i>Mr. Johnson has been trained according to established procedures outlined in EMS procedure manual.</i>
2. Knowledge of housekeeping procedures required in isolation environments.		3	<i>Trained according to procedure #15, Isolation cleaning.</i>

G-0374



RETURN TO HUMAN RESOURCES  
N121 NLF 6-16-98

Department of Veterans Affairs

## SUPERVISORY APPRAISAL OF EMPLOYEE FOR PROMOTION

## SPECIALIZED CATEGORY APPRAISAL WITH NARRATIVE

EMPLOYEE NAME <b>Leuis Johnson</b>	PROMOTION AND GRADE <b>HKA WG-2</b>	CURRENT ORGANIZATION <b>EMS - Operations</b>
ORGANIZATION NO. <b>OC 98-38</b>	POSITION APPLIED FOR (Title and grade) <b>HOUSEKEEPING AID, WG-3566-2</b>	ORGANIZATIONAL LOCATION OR POSITION <b>Extended Care - 19-3</b>

INSTRUCTIONS: The information furnished on this form will be important in determining the degree to which the employee possesses the Knowledge, Skills, Abilities, and Other characteristics (KSAs) which are required for performance in the position being filled. In Column II below, the supervisor and/or reviewer will indicate beside the Rating Factor (KSAO) or Job Element listed in Column I, the number of the Category Rating (0 to 5) which best describes the employee's performance with respect to the Rating Factor (KSAO) or Job Element. If the employee's current job does not include any of the KSAs in the Rating Factor or Job Element and, therefore, performance in them has not been observed, mark "0". In Column III, for each Rating Factor or Job Element,

give specific examples which show how the employee's performance justifies the Category Rating assigned. If more space is required, use additional sheets of paper and include the name of the supervisor at the top of each sheet and identify the appropriate Rating Factor or Job Element. NOTES: This form may be used for comments by the supervisor followed by those of the reviewer or separate forms may be used for each. If separate forms are used for the supervisor and the reviewer, the supervisor's appraisal should be made available to the reviewer during the review process.

## CATEGORY RATINGS

- Employee's performance exceeds expectations to such an extent that it warrants special mention for placement consideration.
- Employee has demonstrated the Rating Factor (KSAO) or Job Element to a degree that is clearly above that expected of a fully competent employee and you would expect the employee to display the same degree of ability in the position applied for.
- Employee has demonstrated the Rating Factor (KSAO) or Job Element to the full extent expected of a thoroughly competent employee and you would recommend the employee with confidence for another position in which the Rating Factor (KSAO) or Job Element is important.

- Employee's performance relative to the Rating Factor (KSAO) or Job Element is acceptable but you would have some reservations about recommending the employee for another position in which the Rating Factor (KSAO) or Job Element is important.
- Employee's performance relative to the Rating Factor (KSAO) or Job Element exhibits some definite weaknesses.
- Unable to appraise. (When this category is used, cite reasons - e.g., current job does not include the KSAO's in this Rating Factor or Job Element.)

RATING FACTOR (KSAO) OR JOB ELEMENT COLUMN I	CATEGORY COLUMN II	NARRATIVE: Specific examples of what the employee has or has not done in cause me to award this rating. COLUMN III
1. Knowledge of proper cleaning procedures and proper uses of a variety of cleaning and sanitizing solutions.	3	Mr. Johnson has been trained according to established procedures outlined in EMS procedure manual.
2. Knowledge of housekeeping procedures required in isolation environments.	3	Trained according to procedure #15, Isolation cleaning.

G-0374

RETURN TO HUMAN RESOURCES  
M121 NLT 6-16-98

Department of Veterans Affairs

## SUPERVISORY APPRAISAL OF EMPLOYEE FOR PROMOTION

## SPECIALIZED CATEGORY APPRAISAL WITH NARRATIVE

NAME OF EMPLOYEE  
*LEWIS Johnson*PRESENT POSITION AND GRADE  
*HKA WG-2*

CURRENT ORGANIZATION

*EMS - OPERATIONS*ACQUISITION NO.  
*OC 98-38*POSITION APPLIED FOR (Title and grade)  
*HOUSEKEEPING AID, WG-3566-2*ORGANIZATIONAL LOCATION OF POSITION  
*Extended Care - 19-3*

INSTRUCTIONS: The information furnished on this form will be important in determining the degree to which the employee possesses the Knowledge, Skills, Abilities, and Other characteristics (KSAs) and/or reviewer will indicate beside the Rating Factor (KSAO) or Job Element listed in Column I, the number of the Category Rating (1 to 5) which best describes the employee's performance with respect to the Rating Factor (KSAO) or Job Element. If the employee's current job does not include any of the KSAs in the Rating Factor or Job Element and, therefore, performance in them has not been observed, mark "0". In Column III, for each Rating Factor or Job Element,

give specific examples which show how the employee's performance justifies the Category Rating assigned. If more space is required, use additional sheets of paper and include the name of the supervisor at the top of each sheet and identify the appropriate Rating Factor or Job Element. **NOTE:** This form may be used for comments by the supervisor followed by those of the reviewer or separate forms may be used for each. If separate forms are used for the supervisor and the reviewer, the supervisor's appraisal should be made available to the reviewer during the review process.

## CATEGORY RATINGS

- 5 Employee's performance exceeds expectations to such an extent that it warrants special mention for placement consideration.
- 4 Employee has demonstrated the Rating Factor (KSAO) or Job Element to a degree that is clearly above that expected of a fully competent employee and you would expect the employee to display the same degree of ability in the position applied for.
- 3 Employee has demonstrated the Rating Factor (KSAO) or Job Element to the full extent expected of a thoroughly competent employee and you would recommend the employee with confidence for another position in which the Rating Factor (KSAO) or Job Element is important.

- 2 Employee's performance relative to the Rating Factor (KSAO) or Job Element is acceptable but you would have some reservations about recommending the employee for another position in which the Rating Factor (KSAO) or Job Element is important.
- 1 Employee's performance relative to the Rating Factor (KSAO) or Job Element exhibits some definite weaknesses.
- 0 Unable to appraise. (When this category is used, the reasons - e.g., current job does not include the KSAO's in this Rating Factor or Job Element.)

RATING FACTOR (KSAO) OR JOB ELEMENT		COLUMN II CATEGORY	COLUMN III NARRATIVE: Specific examples of what the employee has or has not done in connection with this rating.
1. Knowledge of proper cleaning procedures and proper uses of a variety of cleaning and sanitizing solutions.		3	<i>Mr. Johnson has been trained according to established procedures outlined in EMS procedure manual.</i>
2. Knowledge of housekeeping procedures required in isolation environments.		3	<i>Trained according to procedure #15, Isolation cleaning.</i>

G-0374

8-6-98

To AFGE 1966

I would like the Union AFGE 1966 to conduct an Audit on my behalf. To see if there were any discrepancy that may have led to me no selection of the position of Housekeeping A/C in the Extended CARE Product Line Area 19-3.

I would like to conduct this Audit as it is stated in our Master Agreement; Article 22 Merit Promotion Section 16 Union Review of Competitive Actions.

I would like to see the list of Union representatives who responsible for doing the Audit.

Jewell W. Johnson 8-6-98

Received  
Sept 10<sup>th</sup> 1998  
JW



Lewis W. Johnson  
Wick  
Sep. 2, 1998

Hello Peg

I would like a copy of the minutes of the union meeting on Aug 24<sup>th</sup> 1998. Also, I would like to see your copy of my audit request, and a written statement ~~why it wasn't~~ stating why I wasn't give the audit information from the union.

Lewis W. Johnson

Received Your Request Sept 8. 1998 @ 9:00AM FW.

From The Desk of  
**LEWIS JOHNSON Sr.**

## Memo for the Record

13 October, 1998

To: Michael Brennan  
From: LEWIS JOHNSON Sr.  
Date: 10/13/98  
Re: Informal Grievance

Subject: Admonishment for Absence on 27 Aug 98 Ref: Article 13, Sec 1, 6, 7

Article 32 Sec 2 para c, d h

On 21 Aug 1998, I verbally told Rodney K. Weekend Supervisor that I wanted to cancel my leave scheduled for Aug 31 to Sept 4 1998. Rodney granted my request. Rodney suggested that I put my requested cancellation in the Employee Time and Leave computer, I did this immediately. At this time he did not mention that my work schedule would be alter in anyway or that I would be working on my regular days off (RDO) When I arrived at work on the 28 Aug 1998 to pick up my uniforms for work, I was told by Mike Brennan Daylight Supervisor that I was suppose to work the preceding day. I informed him at that time I had not been told of a work schedule change. He said that no one communicated that I had canceled my annual leave and that I should have been at work the preceding day. I asked Mike Brennan for annual leave and he said Okay. I had assumed that leave was approved until 14 Sept 1998, when I pulled up my Leave Used Summary on the computer and found the leave charged as AWOL. I was given no prior notification that the leave was changed to AWOL or the reason for the Admonishment.

Relief: I request that, my request for annual leave be reinstated and the AWOL be removed from my record. (Please reference Past Practices and Article 13 Section 1, 6 and 7, Article 32, Section 2 para c, d, and h. of the Master Agreement

Past Practices: On two previous occasions Mike Brennan asked me to use annual leave when he scheduled me incorrectly for nine days instead of 10 days this occurring in the months May and July.

Sign:

*Lewis W. Johnson*  
10-13-98



## Memorandum of Understanding

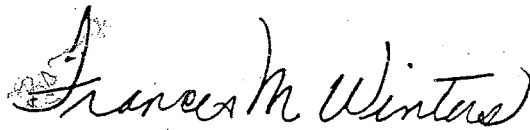
Between  
VAMC Lebanon  
and  
AFGE Local 1966

### Seniority Determinations

The parties agree that the determination of seniority when used in reassignment decision, whether for the most or least senior the following definition will apply:

The primary determining factor will be entrance on duty (EOD) at the VAMC Lebanon.

In situations where there is a tie on EOD the next determining factor will be Service Computation Date (SCD) as defined in Federal Regulations.  
If both EOD and SCD are equal the employee(s) with the higher last 2 digits of their Social Security Number will be deemed to be more senior.



Frances M. Winters  
President, AFGE Local 1966



Timothy P. Shea  
Acting, CEO

Dist. "B"

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
AFFILIATED WITH THE AFL-CIO

LOCAL 1966



V.A. MEDICAL CENTER  
1700 S. Lincoln Avenue  
Lebanon, PA 17042-7597

November 24, 1999

Raymer Kent  
Human Resources Manager

A.F.G.E. is requesting an extension of time frame for the process of filing grievance and or appeals on behalf of Lewis Johnson in reference to the following "Monetary/Group Award 1998" and the current "Assault/Harassment".

Respectfully,

*Frances M Winters*

Frances M. Winters  
President AFGE Local 1966

*Lewis Johnson found out about the Monetary/Group Award 1998 - this past September 23, 1999<sup>fw</sup> - F.M.W. 11/24/99*

*A 30 day extension is approved beginning 11-22-99*

*Ray Kent*

April 19, 1994

Attachment

## RANGE OF PENALTIES FOR STATED OFFENSES

The following is a partial listing of the most common offenses, excerpted from VHA Supplement, MP-5, Part II, Chapter 8. The entire listing is available in the Human Resources Management Service Office, Building 1, Ground Floor, Room 31.

Nature of Offense	1st Offense		2nd Offense		3rd Offense	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
1. Unexcused tardiness unauthorized absence	Admonishment	Reprimand	Reprimand	10 days	10 days	Discharge
2. Leaving job, VA premises or job to which assigned during working hours, without proper permission.	Admonishment	Reprimand	Reprimand	5 days	10 days	Discharge
3. Loafing, willful idleness or waste of time.	Admonishment	Reprimand	Reprimand	10 days	10 days	Discharge
4. Smoking in unauthorized places or carrying of flammables, e.g., matches, in explosive areas.	Admonishment	Reprimand	Reprimand	10 days	10 days	Discharge
5. Endangering the safety of or causing injury to yourself or other personnel through carelessness or negligence.	Admonishment	Discharge	10 days	Discharge	Discharge	
6. Failure to report personal injury or accident.	Admonishment	Reprimand	Reprimand	10 days	5 days	15 days
7. Failure to safeguard confidential matter.	Admonishment	Reprimand	Reprimand	10 days	10 days	Discharge
8. Deliberates failure or unreasonable delay in carrying out instructions.	Admonishment	Reprimand	3 days	10 days	10 days	Discharge

Exhibit 10

where safety of patients, beneficiaries, members of the public, employees or property is not endangered.	ASPER LINGUIST	WORLD LINGUIST	DISCHARGE	10 days	DISCHARGE
10. Sleeping on duty where safety of patients, beneficiaries, members of the public, employees, or property is endangered.	Discharge	Discharge			
11. Abuse of patients or beneficiaries.	Discharge	10 days	Discharge		Discharge
12. Fighting, threatening, attempting or inflicting bodily injury to another; engaging in dangerous horseplay.	Discharge	10 days	Discharge		Discharge
13. Disrespectful conduct, use of insulting, abusive, or obscene language to or about other personnel.	Discharge	10 days	Discharge		Discharge
14. Insubordination - deliberate refusal to carry out any proper order from, or insolent, abusive or obscene language toward, immediate or other supervisor having responsibility for the work of the employee; willful resistance to same.	Discharge	10 days	Discharge		Discharge
15. Reporting to or being on duty while under the influence of alcohol.	10 days	15 days	Discharge		Discharge
16. Reporting to or being on duty while under the influence of a drug or controlled substance.	Discharge	Discharge			

Refusal to take drug test, as ordered.	Admonishment	Discharge	1 <sup>st</sup>	Discharge	Discharge
Sexual harassment.	Reprimand	Discharge	5 days	Discharge	10 days
Indebtedness - of good faith in giving just financial relations . . .	Admonishment	Discharge	Admonishment	Reprimand	5 days
Theft of Government property.	Reprimand	Discharge	10 days	Discharge	Discharge
Intentional misinformation, statement, or misstatement of material . . .	Reprimand	Discharge	10 days	Discharge	Discharge
Participation in type of "prohibited" activities . . .	Admonishment	Discharge	10 days	Discharge	
Entering into personal financial actions, accepting or gratuities (whether in forms of goods, money, services, purchases at discount, entertainment, or similar favors) patients or beneficiaries . . .	Reprimand	Discharge	Discharge		
Discrimination based on race, color, sex, national origin, marital status, religious affiliation, disability.	Reprimand	Discharge	5 days	Discharge	10 days
					Discharge



03/27/00 16:03 717 28 6022

VAMC LEBANON

030



DEPARTMENT OF VETERANS AFFAIRS  
Medical Center  
1700 South Lincoln Avenue  
Lebanon, PA 17042

1-CE-1

November 1, 1999

In Reply Refer To: 595/121

United States Department of Labor  
Office of Workers' Compensation Program  
3535 Market Street  
Philadelphia PA 19104

Dear Claims Examiner:

Enclosed please find a claim for a Traumatic Injury being submitted by Mr. Lewis Johnson, SSN184-48-8509, that was alleged to have occurred on September 18, 1999. The cause of injury provided on the CA-1 alleges that Mr. Johnson was "physically assaulted by another employee who caused stress and strain". This claim is being controverted based on the information obtained during a review of the incident.

This incident was reported to the supervisor on October 18, 1999, and a Report of Contact was initiated. In an effort to defuse the situation, Mr. Rodney Kiscadden immediately assigned the two employees involved to separate areas of the medical center. Mr. Kiscadden also counseled the employee involved and ordered the employee not to have any contact with Mr. Johnson. A witness statement that has been provided indicates that a confrontation had occurred and words were exchanged between Mr. Johnson and another employee, but does not indicate that an assault occurred. An official police investigation was conducted concerning the incident and there was no evidence found to support that an actual assault had occurred during the confrontation. I have enclosed a copy of the police report for your review.

On October 22, 1999, Mr. Johnson spoke with Mr. Raymer Kent, Human Resources Manager, about the incident. During the meeting, Mr. Kent informed Mr. Johnson that the supervisor had ordered the other employee involved in the incident to refrain from making any contact with Mr. Johnson. Mr. Kent also assured Mr. Johnson that the other employee would not be assigned to work in proximity to Mr. Johnson's assigned area.

On the date of the incident, Mr. Johnson requested and was granted Annual Leave for the remaining two and a half-hours of his shift. Mr. Johnson returned to work the following day, October 19, 1999, and worked a full 8-hour day without incident. On the following day

ATTACHMENT F - 4 PAGES - 7 OF 4 PAGES

Exhibit  
11



03/27/00 15:56

17 228 6022

VAMC LEBANON

OCT-21-1999 11:22

FROM

T-248 P.002/002 F-490

026

Fax

Philhaven


 183  
 P.O. Box 600  
 Mt. Gretna, PA 17064  
 (717) 273-4871

# AUTHORIZATION FOR RELEASE OF INFORMATION

I do hereby consent and authorize Philhaven to receive from/disclose to:

Name

Address

Phone Number

V A Hospital Raymer Kent  
 Miss McWiggins X 4661  
 272-6621 Fax Number

information from my medical record(s) related to my identity, diagnosis, prognosis and treatment (including diagnosis and/or treatment for mental health, drug/alcohol abuse and/or HIV-related information). The specific information to be received/disclosed includes:  
 (Please mark and X in the correct column for each document)

Receive	Disclose		Receive	Disclose	
<input type="checkbox"/>	<input type="checkbox"/>	Discharge Summary	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Initial Evaluation/Admission Note
<input type="checkbox"/>	<input type="checkbox"/>	Social History	<input type="checkbox"/>	<input type="checkbox"/>	Psychological Evaluation/Summary
<input type="checkbox"/>	<input type="checkbox"/>	Immunization Record	<input type="checkbox"/>	<input type="checkbox"/>	Homebound Instruction Report
<input type="checkbox"/>	<input type="checkbox"/>	History & Physical	<input type="checkbox"/>	<input type="checkbox"/>	Patient Data Form
<input type="checkbox"/>	<input type="checkbox"/>	Outpatient Treatment Summary	<input type="checkbox"/>	<input type="checkbox"/>	Referral/Treatment Summary
<input type="checkbox"/>	<input type="checkbox"/>	Discharge Instructions	<input type="checkbox"/>	<input type="checkbox"/>	Psychiatric Evaluation/Summary
<input type="checkbox"/>	<input type="checkbox"/>	Alcohol and Other Drug Consult	<input type="checkbox"/>	<input type="checkbox"/>	Laboratory Reports
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Other (list specific items):			Verbal/written communication, testing results

I understand this information is to be used for the purpose of: (check as many as apply) ☐ Diagnosis ☐ Continuity of care ☐ Treatment planning ☐ Discharge planning ☐ Other:

*This information is being disclosed from records whose confidentiality may be protected by Pennsylvania Law, Act 63, and/or Pennsylvania P.L. 817, and/or Federal Public Law 93-282, and/or Code of Federal Regulations, 42 (Drug and Alcohol treatment records), and/or Act 148, (Confidentiality of HIV-related Information Act). I understand the nature of this release and understand that I have the right to inspect material that is to be released. I understand that I may revoke this authorization at any time by notifying Philhaven.*

This authorization shall be effective immediately and shall expire in one year from the date hereof or on \_\_\_\_\_, 20\_\_\_\_ and is valid for all medical record documentation during the effective period.

I understand that I have the right to request a copy of this authorization and that I may revoke my consent at anytime by written notice to Philhaven.

Check one: ☐ patient accepted copy ☒ patient declined copy

X Lewis Johnson  
 Patient's Signature  
 (or parent/guardian for child under 14 years of age)

X 10/21/99  
 Date

X self  
 Relationship to Patient (to be completed only when parent/guardian or person with Power of Attorney authorizes release for the patient)

X John Swley  
 Signature of Witness

X 10/21/99  
 Date

## THIS PORTION TO BE COMPLETED WHEN PATIENT IS UNABLE TO GIVE WRITTEN CONSENT

We, the undersigned, do verify that the above authorization has been read to the patient and that he/she understands the nature the release and freely gives his/her verbal consent for release of the above information. The patient has also been informed that he/she may verbally revoke this authorization at any time.

Signature of Witness/Date

Signature of Witness/Date

Auth. for Release of Info.

PC-135A

01-99

G-0206

Patient Name:

Patient Number:

Date of Birth:

ATTACHMENT I - 3 PAGES - 2 OF 3 PAGES

03/27/00 15:55 717 228 6022

VAMC LEBANON

0025

OCT-21-1999 11:22 FROM

T-248 P.001/002 F-480

FAY-1

**Fax Transmission From:**Philhaven Lebanon  
204 Hathaway Park  
Lebanon, PA 17042

Telephone: 717-274-9777

Fax: 717-274-9815

Date/Time: 10/21/99

# of pages to follow cover sheet:

To: Mr KeatConfidential Yes X No     

Special Instructions: Please list documents being faxed.

VA - HR  
Organization

Fax Number

Telephone Number

From: John SwleyPhilhaven Lebanon  
204 Hathaway Park  
Lebanon, PA 17042  
Fax: 717-274-9815

Telephone: 717-274-9777

The information contained in this facsimile message is privileged and confidential information intended for the use of addressee listed above. If you are neither intended recipient or the employee or agent responsible for delivering information to the intended recipient, you are hereby notified that any disclosure, copying, distribution, taking of any in reliance on the content of this telecopied information is strictly prohibited.

Please call sender as soon as possible at the telephone number indicated above to verify receipt of the fax or to report problems with the transmission.

If you have received this copy in error, please immediately notify the sender by telephone at the number indicated above, arrange for destruction of the documents.

RECEIVED  
HUMAN RESOURCES

OCT 21 1999

VA MEDICAL CENTER  
LEBANON, PA 17042

G-0205

Time Line As Provided by  
Lewis W. Johnson

**Wednesday, October 13, 1999**

8:00 AM Johnson (black male) meets Chandler (black male) and Erickson (white male) in the hallway of building #1. Erickson stated to Johnson, " Hey Lewis, let me tell you what people are saying about you. " Johnson responds I don't want to hear it." Erickson then places his body in Johnson's path to prevent him passing, shouts to Chandler, " Hey Lou, I'm going to tell Lewis what people are saying about him. " Chandler does not respond in any manner. Erickson then stated to Johnson, " People are saying you are a white man in a black man's skin. " Johnson shoves his way past Erickson and walks quickly away. As Johnson leaves he hears Erickson loudly laughing.

2:00 PM Near the Environmental Management Services ( EMS ) office, Johnson meets Chandler in one of the tunnels. Johnson stated to Chandler, " I am going to make a complaint on what Erickson said to me. " Chandler replied, " You got to do what you got to do, I understand." Johnson then stated, " Someone will probably talk to you. " They then parted, going in different directions.

**Thursday, October 14, 1999**

(7:30 AM) During the morning Johnson met his supervisor, Rodney Kiscadden, near the EMS office. Johnson inquires what forms were needed to make a complaint on a fellow employee. Kiscadden indicated he did not know but would find out and let Johnson know, during the course of the day.

(1:30 PM) Kiscadden informed Johnson that he would need a ' Point of Contact ' form to file a written complaint on an employee.

(2:00 PM) Johnson obtained a ' Point of Contact ' form from the Nursing Station in building 1-3A.

**Friday, October 15, 1999**

(2:30 PM) Johnson met with Kiscadden in the EMS office. Johnson explained the nature of the complaint and told Kiscadden he had a 'rough draft' that needed to be typed. Kiscadden then left the office at which time Glenn Definbach ( a Housekeeping Aid ), who had been sitting in an adjacent office, came out and asked Johnson, " What's going on with you, Irv and Louis and this racial remark? " Johnson asked Definbach, " What did you hear? " Definbach explained to Johnson, he had over heard a conversation between Erickson, Chandler and Ms. Lynette Brady ( EEO personnel ), concerning a racial remark made toward Johnson.

**Monday, October 18, 1999**

(8:30 AM) While at his assigned work location, Johnson telephoned the Office of Resolution Management ( ORM ) and explained to Ms. Mitchell, who answered the telephone, the incident concerning the racial remark by Erickson, which occurred on October 13, 1999. Ms. Mitchell stated she would forward the complaint to a Counselor, who would contact Johnson.

Exhibit 13



(10:20 AM) Johnson was in building #1, ward 3A, his assigned work location, standing at the Nursing Station, holding a conversation with Ward Clerk, Barbara Yeich. Erickson entered the area and from about twenty feet away shouted, "Hey Lewis. I want to talk to you." Johnson responded, "I don't want to talk to you." Johnson began walking in the opposite direction from Erickson. A few seconds later, Johnson felt a slight blow to the middle of his back. Glancing over his shoulder, Johnson realized Erickson had caught up to him and was using his shoulder to cause these blows to Johnson's back. Each blow to Johnson's back caused him, Johnson to stumble. Again, over and over, Erickson repeated, "I want to talk to you and tell you what they are saying." Each time Johnson responded, "Leave me alone, I don't want to hear it." This occurred approximately fifteen feet in one direction and fifteen feet in the opposite direction, until they again arrived at the Nursing Station. On arriving again at the Nursing Station, Johnson ran through the opening to the Nursing Station, to a nearby bathroom and locked himself in. After an unknown amount of time, Johnson exited the bathroom, figuring Erickson had left the area. On realizing Erickson was no longer in the area, Johnson telephoned Carolyn Mcguigan, his department chief and was told by her secretary to report to Mcguigan's office at 10:45 AM. After speaking to this secretary, Johnson called ORM and explained he had just been assaulted. Ms. Mitchell told Johnson someone would contact him.

(10:45 AM) Johnson met with Mcguigan and explain everything that had occurred with Erickson from October 13, 1999 up to that point. Mcguigan summoned Kiscadden into her office and Kiscadden confirmed previous complaints from Johnson regarding Erickson. Mcguigan completed a 'Point of Contact' form and Johnson left the office.

### **Tuesday, October 19, 1999**

(8:15 AM) Johnson reported to his assigned work area, building #1, ward 3A. Johnson and Yeich discussed what occurred the previous day. Yeich, during this conversation stated she had seen everything that had occurred including Erickson hitting Johnson. Yeich went on to explain to Johnson that she was extremely upset due to a conversation she had with Kiscadden. Yeich stated the first thing asked her by Kiscadden was, "So, whose side are you taking?"

(9:30 AM) Erickson appeared in building #1, ward 3A, Johnson's assigned work location. Erickson looked directly at Johnson, stopped and smiled very broadly. Erickson then went into the work closet assigned to Johnson. Erickson exited the work closet, smiled again at Johnson and went into the shower room. Johnson went over to close the door to the work closet, which had been left open by Erickson. Erickson then came out of the shower, again smiled broadly at Johnson and left the area. Johnson noticed something in Erickson's hand but did not see what it was. Johnson immediately called the Veterans Administration Police and reported all that had occurred. Johnson was instructed to come to the police station in order to make a full report.

(9:45 AM) Johnson arrived at the VA police station and gave a full report as to every thing that had occurred, beginning October 13, 1999.

### **Wednesday, October 20, 1999**

(7:45 AM) Johnson arrived at work and was informed he was assigned to building #1, ward 3, ICU. He was also informed that Erickson was assigned to the same building and was moving furniture from floor to floor. Johnson stated that's not right or words to that affect and began to cry. Johnson stated he felt sick and requested sick leave in order to go home. Kiscadden stated to Johnson, "Sit and calm down and I'll go talk to the chief about you going home on sick



leave. " As Kiscadden left, Definbach, who was in the next room, came out and inquired if Johnson was okay. Kiscadden returned and told Johnson it was okay for him to go home on sick leave but "they" wanted to talk to him first. Johnson asked to be allowed to wait in his van. Prior to going to his van, Johnson called Robert Dennis, union steward, and asked him to meet him at his van because he, Johnson needed help. A few minutes later, Dennis arrived at Johnson's van, at which time Johnson explained that his supervisors were forcing him to work in the same location as Erickson. Dennis stated to Johnson he would go talk with them. Dennis returned and stated senior management had informed him that Erickson would not bother him again. At that point a VA police officer arrived at the van; the officer and Dennis escorted Johnson to building #1, ward 3-ICU. As the police officer and Dennis began to leave, Johnson was told Erickson would be coming to his assigned area to remove furniture. Johnson began to shake and asked the two men not to leave. Dennis, who only then learned that Erickson would be working in the same area, made a telephone call. Johnson do not know who Dennis called. Dennis and Johnson returned to building # 2, where they were met by Chief of Police Dennis Herb, Chief of Operations Muratits, Chief of Support Carolyn McGuigan and Kiscadden. Kiscadden explained to the group, in detail, what had been occurring between Erickson and Johnson, since October 13, 1999. Johnson was told the incidents were very serious but however, Erickson would not bother him, Johnson again. Johnson was told he could be assigned to another building, if he so desired. McGuigan stated to Johnson, " You can go home on sick leave but when you return I want you to sit with Mr. Erickson, talk about this, shake hands and make up."

(3:30 PM) Johnson visited his doctor, Earl Brinser, 405 Cumberland Street, Lebanon, PA 17042. After this session with Dr. Brinser, Dr. Brinser, referred Johnson to Phil Haven Mental Health Facility. Further, Dr. Brinser gave Johnson three prescription slips, dated October 20, 1999, with his medical instructions, to wit:

1. Excused from work from October 21, 1999 through October 24, 1999 and to return to work on October 25, 1999. This slip had a notation, " Unable to work " It was signed by Dr Brinser.
2. A prescription for medication, dated October 20, 1999, to include two refills. This was signed by Dr. Brinser.
3. A statement dated October 20, 1999, suggesting treatment, his findings and the cause. The statement as written by Dr. Brinser, " Counseling. Re stress, tension, fear, work related issues."

#### Thursday, October 21, 1999

(5:30 AM) Telephoned EMS and reported off as per doctors instructions.

(10:00 AM) Went to Phil Haven Outpatient Clinic for an initial evaluation. Therapist also faxed a medical report to Mr. Kent. Recommended for Day Hospital.

#### Friday, October 22, 1999

( 9:00 AM) Went to Day Hospital at Phil Haven Mental Health Facility. Instructed by Pakola ( Phil Haven ) recommended not to return to until after treatment.

( 4:00 PM) Met with Raymer Kent and gave him medical notes from Dr. Brinser and Dr. Pakola ( Phil Haven ). The only conversation was why I was unable to handle these problems.

END OF REPORT

*Lewis W. Johnson*

5-99 MON 14:00

P. 02

Counseling – October 20, 1999

Carolyn McGuigan, Chief, Support Section, and Rodney Kiscadden, Acting Manager, Environmental Management (EM), met with EM employee Irvin Erickson concerning the incident between Erickson and Lewis Johnson.

Explained to Mr. Erickson that he will have no contact with Mr. Johnson in the future unless it is work related.

Mr. Erickson was also informed that any future substantiated complaints could result in disciplinary actions.

*Rodney M. Kiscadden*  
RODNEY M. KISCADDEN  
Acting Manager, EM

I acknowledge receipt of the original of this counseling.

Name: *Irvin D. Erickson*

Date: 11-15-99

G-086

*Erickson*

NOV-15-99 MON 14:00

P. 02

Counseling - October 20, 1999

Carolyn McGuigan, Chief, Support Section, and Rodney Kiscadden, Acting Manager, Environmental Management (EM), met with EM employee Irvin Erickson concerning the incident between Erickson and Lewis Johnson.

Explained to Mr. Erickson that he will have no contact with Mr. Johnson in the future unless it is work related.

Mr. Erickson was also informed that any future substantiated complaints could result in disciplinary actions.

*Rodney M. Kiscadden*  
RODNEY M. KISCADDEN  
Acting Manager, EM

I acknowledge receipt of the original of this counseling.

Name: *Irvin D. Erickson*

Date: 11-15-99

G-086

*Exhibit 14*

**REPORT OF CONTACT**

NOTE: This form must be filled out in ink or on typewriter as it becomes a permanent record in veterans' folders.

A Medical Center  
700 South Lincoln Avenue  
Lebanon, PA 17042

IDENTIFICATION NOS. (C, X, C, SS, XSS, V, K, e)

LAST NAME-FIRST NAME-MIDDLE NAME OF VETERAN (Type or print)

ADDRESS OF VETERAN

DATE OF CONTACT  
October 18, 1999

PERSON CONTACTED

TELEPHONE NO. OF VETERAN

ADDRESS OF PERSON CONTACTED

TYPE OF CONTACT (Check)

☒ PERSONAL ☐ TELEPHONE  
TELEPHONE NO. OF PERSON CONTACTED

BRIEF STATEMENT OF INFORMATION REQUESTED AND GIVEN

On October 18, 1999, I met with Environmental Management (EM) employee Irvin Erickson about separate harassment incidents occurring with EM employee Lewis Johnson.

Mr. Erickson told me that he did not originally make the statement "You are a white person in black skin," but only repeated that statement that was said about Mr. Johnson.

On the second incident, Mr. Erickson explained he wanted to talk to Mr. Johnson and Mr. Johnson was avoiding him and wouldn't talk to him. They might have brushed shoulders during this incident, but Mr. Erickson would not concur this happened.

DIVISION OR SECTION

Operations Product Line/EM

EXECUTED BY (Signature and Title)

*Rodney Kiscadden*  
RODNEY KISCADDEN  
Acting Manager, Environmental Management

Exhibit 15



DEPARTMENT OF VETERANS AFFAIRS  
Medical Center  
1700 South Lincoln Avenue  
Lebanon, PA 17042

November 17, 1999

In Reply Refer To: 595/N131

Mr. Lewis W. Johnson  
1025 Harmany Hill Drive  
Lebanon, PA 17046

Dear Mr. Johnson:

We addressed the issues you reported to us with the individual concerned and have taken action to ensure it is not repeated.

We are confident you can return to work without any concerns.

*Rodney M. Kiscadden*  
RODNEY M. KISCADDEN  
Acting Manager, Environmental Management

G-054

Exhibit 16





Department of  
Veterans Affairs

Memorandum

Date: December 15, 1999

From: Acting Manager, E.M.(N137)

Subj: Verification of witness statement.

To: Human Resources Manager (N121)

I have reviewed the witness statement of Barbara Yeich dated October 19, 1999 that was sent to the Department of Labor and is currently in the OWCP folder of Mr. Lewis Johnson. I verify that the information provided by Ms. Yeich in that statement is consistent with the information she provided when I spoke with her concerning this incident. I am not aware of any other witness statements that may have been provided by Ms. Yeich.

*Rodney M. Kiscadden*  
RODNEY M. KISCADDEN

# Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation

U.S. Department of Labor  
Employment Standards Administration  
Office of Workers' Compensation Programs

Employee: Please complete all boxes 1 - 15 below. Do not complete shaded areas.  
Witness: Complete bottom section 16.

Employing Agency (Supervisor or Compensation Specialist): Complete shaded boxes a, b, and c.

## Employee Data

1. Name of employee (Last, First, Middle)  
JOHNSON, LEWIS W

3. Date of birth Mo. Day Yr.  
07 04 56

4. Sex  
☒ Male ☐ Female

5. Home telephone  
(717) 270-0454

2. Social Security Number  
184-48-8509

7. Employee's home mailing address (Include city, state, and ZIP code)  
1025 Harmony Hill Drive

6. Grade as of  
date of injury Level 2 Step 03

8. Dependents  
☒ Wife, Husband  
☒ Children under 18 years  
☐ Other

Lebanon, PENNSYLVANIA 17046

## Description of Injury

9. Place where injury occurred (e.g. 2nd floor, Main Post Office Bldg., 12th & Pine)  
1-3a

10. Date injury occurred Mo. Day Yr.  
10 18 99

Time

10 : 20 ☒ a.m.  
☐ p.m.

11. Date of this notice Mo. Day Yr.  
10 26 99

12. Employee's occupation  
housekeeping aid

13. Cause of injury (Describe what happened and why)  
a physical assault caused by another employee in bldg. 1-3a on oct. 18 @ 10:20 which

caused stress and strain

14. Nature of injury (Identify both the injury and the part of body, e.g., fracture of left leg)  
traumatic mental stress and strain.

a. Occupation code

b. Type code

c. Source code

OWCP Use - NOI Code

Employee Signature  
*Lewis W. Johnson*

10/26/99

15. I certify, under penalty of law, that the injury described above was sustained in performance of duty as an employee of the United States Government and that it was not caused by my willful misconduct, intent to injure myself or another person, nor by my intoxication. I hereby claim medical treatment, if needed, and the following, as checked below, while disabled for work:

☒ a. Continuation of regular pay (COP) not to exceed 45 days and compensation for wage loss if disability for work continues beyond 45 days. If my claim is denied, I understand that the continuation of my regular pay shall be charged to sick or annual leave, or be deemed an overpayment within the meaning of 5 USC 5584.

☐ b. Sick and/or Annual Leave

I hereby authorize any physician or hospital (or any other person, institution, corporation, or government agency) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs (or to its official representative). This authorization also permits any official representative of the Office to examine and to copy any records concerning me.

Signature of employee or person acting on his/her behalf

Date

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided by the FECA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

Have your supervisor complete the receipt attached to this form and return it to you for your records.

## Witness Statement

16. Statement of witness (Describe what you saw, heard, or know about this injury)

see attached

Name of witness  
barbara yeich  
Address

Signature of witness

City

Date signed

State

ZIP Code

Official Supervisor's Report: Please complete information requested below:

**Supervisor's Report**

17. Agency name and address of reporting office (Include city, state, and ZIP code)

VAMC Lebanon

OWCP Agency Code

4265

1700 s. Lincoln Ave.

OSHA Site Code

Lebanon, PENNSYLVANIA

ZIP Code

17042

18. Employee's duty station (Street address and ZIP code)

Same

ZIP Code

19. Regular work hours

☒ a.m.

☐ a.m.

From 06:00 ☐ p.m.

To 02:30 ☒ p.m.

20. Regular work schedule

☐ Sun.

☒ Mon.

☒ Tues.

☒ Wed.

☒ Thurs.

☒ Fri.

☐ Sat.

21. Date of injury

Mo. Day Yr.  
10 18 99

22. Date notice received

Mo. Day Yr.  
10 26 99

23. Date stopped work

Mo. Day Yr.  
10 20 99

☐ a.m.

24. Date pay stopped

Mo. Day Yr.  
10 20 99

25. Date 45 day period began

Mo. Day Yr.  
10 20 99

26. Date returned to work

Mo. Day Yr.  
Time : ☐ a.m.

☐ p.m.

27. Was employee injured in performance of duty? ☒ Yes ☐ No (If "No," explain)

28. Was injury caused by employee's willful misconduct, intoxication, or intent to injure self or another? ☐ Yes (If "Yes," explain) ☒ No

29. Was injury caused by third party?

☐ Yes

☒ No

(If "No," go to item 31.)

30. Name and address of third party (Include city, state, and ZIP code)

31. Name and address of physician first providing medical care (Include city, state, ZIP code)

Dr. Brinser

405 Cumberland ST.

Lebanon, PENNSYLVANIA 17042

32. First date medical care received

Mo. Day Yr.  
10 20 99

33. Do medical reports show employee is disabled for work?

☒ Yes

☐ No

34. Does your knowledge of the facts about this injury agree with statements of the employee and/or witness? ☒ Yes ☐ No (If "No," explain)

35. If the employing agency controverts continuation of pay, state the reason in detail.

36. Pay rate when employee stopped work

\$

Per

**Signature of Supervisor and Filing Instructions**

37. A supervisor who knowingly certifies to any false statement, misrepresentation, concealment of fact, etc., in respect of this claim may also be subject to appropriate felony criminal prosecution.

I certify that the information given above and that furnished by the employee on the reverse of this form is true to the best of my knowledge with the following exception:

Name of supervisor (Type or print)

KISCADDEN, RODNEY

Signature of supervisor

/ES/ KISCADDEN, RODNEY

Date

Oct 26, 1999@09:33:29

Supervisor's Title  
Acting Manager

Office phone

4656

38. Filing instructions

- ☐ No lost time and no medical expense: Place this form in employee's medical folder (SF-66-D)  
☐ No lost time, medical expense incurred or expected: forward this form to OWCP  
☒ Lost time covered by leave, LWOP, or COP: forward this form to OWCP  
☐ First Aid injury

**Disability Benefits for Employees under the Federal Employees' Compensation Act (FECA)**

The FECA, which is administered by the Office of Workers' Compensation Programs (OWCP), provides the following benefits for job-related traumatic injuries:

- (1) Continuation of pay for disability resulting from traumatic, job-related injury, not to exceed 45 calendar days. (To be eligible for continuation of pay, the employee, or someone acting on his/her behalf, must file Form CA-1 within 30 days following the injury; however, to avoid possible interruption of pay, the form should be filed within 2 working days. If the form is not filed within 30 days, compensation may be substituted for continuation of pay.)
- (2) Payment of compensation for wage loss after the 45 days, if disability extends beyond such period.
- (3) Payment of compensation for permanent impairment of certain organs, members, or functions of the body (such as loss or loss of use of an arm or kidney, loss of vision, etc.), or for serious disfigurement of the head, face, or neck.
- (4) Vocational rehabilitation and related services where necessary.
- (5) Full medical care from either Federal medical officers and hospitals, or private hospitals or physicians, of the employee's choice. Generally, 25 miles from the place of injury, place of employment, or employee's home is a reasonable distance to travel for medical care; however, other pertinent facts must also be considered in making selection of physicians or medical facilities.

At the time an employee stops work following a traumatic, job-related injury, he or she may request continuation of pay or use sick or annual leave credited to his or her record. Where the employing agency continues the employee's pay, the pay must not be interrupted until:

- (1) The employing agency receives medical information from the attending physician to the effect that disability has terminated;
- (2) The OWCP advises that pay should be terminated; or
- (3) The expiration of 45 calendar days following initial work stoppage.

If disability exceeds, or it is anticipated that it will exceed, 45 days, and the employee wishes to claim compensation, Form CA-7, with supporting medical evidence, must be filed with OWCP. To avoid interruption of income, the form should be filed on the 40th day of the COP period. Form CA-3 shall be submitted to OWCP when the employee returns to work, disability ceases, or the 45 days period expires.

For additional information, review the regulations governing the administration of the FECA (Code of Federal Regulations, Title 20, Chapter 1) or Chapter 810 of the Office of Personnel Management's Federal Personnel Manual.

**Privacy Act**

In accordance with the Privacy Act of 1974 (Public Law No. 93-579, 5 U.S.C. 552a) and the Computer Matching and Privacy Protection Act of 1988 (Public Law No. 100-503), you are hereby notified that: (1) The Federal Employees' Compensation Act, as amended (5 U.S.C. 8101, et seq.) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor. In accordance with this responsibility, the Office receives and maintains personal information on claimants and their immediate families. (2) The information will be used to determine eligibility for and the amount of benefits payable under the Act. (3) The information collected by this form and other information collected in relation to your compensation claim may be verified through computer matches. (4) The information may be given to Federal, State, and local agencies for law enforcement and for other lawful purposes in accordance with routine uses published by the Department of Labor in the Federal Register. (5) Failure to furnish all requested information may delay the process, or result in an unfavorable decision or a reduced level of benefits. (Disclosure of a social security number (SSN) is voluntary; the failure to disclose such number will not result in the denial of any right, benefit or privilege to which an individual may be entitled. Your SSN may be used to request information about you from employers and others who know you, but only as allowed by law or Presidential directive. The information collected by using your SSN may be used for studies, statistics, and computer matching to benefit and payment files.)

**Receipt of Notice of Injury**

This acknowledges receipt of notice of injury sustained by:  
(Name of injured employee)

*Lewis Johnson*

Which occurred on (Mo., Day, Yr.)

*10-18-99*

At (Location)

*Bldg. #1, 3rd Floor*

Signature of Official Superior

Title

Date (Mo., Day, Yr.)

*Joseph R. Stuckey Jr.* *Personnel Management Specialist*

*10-26-99*



DEPARTMENT OF VETERANS AFFAIRS  
VA POLICE  
UNIFORM OFFENSE REPORT  
UOR# 99-10-19-0930

Page 4

VA Facility  
LEBANON, PA  
Automated VA Form 10-1393

Date/Time Printed  
OCT 19, 1999@12:25

YEICH STATED THAT JOHNSON WALKED BEHIND THE NURSES STATION AND LOCKED HIMSELF IN THE BATHROOM. WITNESS STATEMENT IS ATTACHED TO THIS REPORT.

ON 10-19-99 AT 1042 HOURS I APPROACHED IRV ERICKSON IN BLDG# 1 FIFTH FLOOR IN HIS OFFICE AREA. BEFORE ANY STATEMENTS WERE MADE I INFORMED ERICKSON OF HIS RIGHTS, TO WHICH HE FULLY UNDERSTOOD. I BEGAN TO INTERVIEW ERICKSON CONCERNING THIS MATTER. ERICKSON STATED THAT ON 10-13-99 AT 0800 HOURS HE CALLED JOHNSON OVER ONLY TO TELL HIM WHAT PEOPLE WERE SAYING ABOUT HIM. ERICKSON STATED THAT THIS WAS NOT HIS PERSONAL FEELINGS BUT ONLY WHAT PEOPLE WERE SAYING. ERICKSON STATED THAT HE DID SAY "HEY LEWIS, THEY ARE SAYING THAT YOU ARE A WHITE MAN IN BLACK SKIN". ERICKSON SAID THAT EMS EMPLOYEE L. CHANDLER WAS THERE TO WITNESS THESE STATEMENTS. ERICKSON STATED THAT JOHNSON, CHANDLER AND HIMSELF WERE JOKING AROUND EARLIER THAT MORNING. ERICKSON STATED THAT ON 10-18-99 AT 1025 HE DID IN FACT APPROACH JOHNSON ON 1-3A ONLY TO CLEAR UP THE MISUNDERSTANDING BETWEEN THEM ON THE STATEMENTS MADE. ERICKSON STATED THAT HE NEVER PUSHED HIS SHOULDER INTO JOHNSON OR MADE ANY PHYSICAL CONTACT WITH JOHNSON. HE JUST WANTED TO TALK TO JOHNSON TO CLEAR THINGS UP. SEE VOLUNTARY STATEMENT ATTACHED TO THIS REPORT.

ON 10-19-99 AT 1150 HOURS I INTERVIEWED L. CHANDLER CONCERNING THIS MATTER. CHANDLER STATED THAT ERICKSON WAS ONLY TELLING JOHNSON WHAT OTHER PEOPLE WERE SAYING ABOUT HIM. CHANDLER STATED THAT ERICKSON WASN'T VIEWING HIS OWN PERSONAL FEELINGS ABOUT JOHNSON. SEE VOLUNTARY STATEMENT ATTACHED TO THIS REPORT.

AFTER HEARING THE TESTIMONY OF ALL INVOLVED AND MY INVESTIGATION, I FIND THAT THE COMPLAINT FILED BY L. JOHNSON AGAINST I. ERICKSON IS UNFOUNDED. NO FURTHER POLICE ACTION REQUIRED AT THIS TIME.

DISPOSITION:

CASE CLOSED.

  
STEPHEN J JR SABOL # 2987  
INVESTIGATING OFFICER

Exhibit 19



Veterans Administration

## VOLUNTARY WITNESS STATEMENT

Statement of Lewis Erickson, Date of Birth \_\_\_\_\_  
 and Social Security Number \_\_\_\_\_. Given on \_\_\_\_\_  
 to \_\_\_\_\_, at \_\_\_\_\_  
 in reference to Uniform Offense Report Number \_\_\_\_\_

10-13-99 Lewis Johnson came down to  
 1-2B where ~~of~~ Louis Chandler and I  
 were doing work. He had no reason to  
 be down there, so all three of us were  
 kidding around, and as he was leaving  
 I said to him what his own brother  
 says about him. I did not tell him that  
 as my point of view, only what his  
 own brother says about him. I have  
 no ill feeling against Johnson. I do  
 not stalk him.

As far as 10-18-99 I approached Mr  
 Johnson to explain what I said, as he  
 walked away from me we slightly  
 bumped into each other. No Malice  
 was intended. I just wanted to explain  
 to him what was said.

I have read each page of this statement consisting of \_\_\_\_\_ pages(s) and I certify that the information  
 given is true to the best of my knowledge.

Lewis Erickson  
 (Declarant) Signature

10-20-99  
 Date

(Witness) Signature

Date

Exhibit 20



March 25, 2000

In reply to: ORM/08E

REGISTERED MAIL

LEWIS JOHNSON  
1025 HARMONY DR.  
LEBANON, PA 17046

George Irvin, EEO Counselor  
Dept. of VA  
ORM (08E)  
151 Knollcroft Rd. Bldg. #16  
Lyons New Jersey 07939

Dear George Irvin, EEO Counselor,

In response to your letter, I am forwarding the following:

This complaint is against Mr. Stuckey, Mr. Kent and Mr. Kiscadden for not following the guidelines in the "Injury Compensation for Federal Employees Publication CA-810". I believe they wrongfully impede my claim because of unlawful discriminatory reasons. Reprisal and harassment. Because of prior EEO activities.

On October 26, 1999, at approximately 8:30 A. M., I arrived at the Human Resources Offices at the Lebanon Veterans Administration Hospital. I entered the office of Joseph Stuckey and stated to him, "I'm here because of what happen to me because of the assault." He replied, "You're here to put in a claim because you were assaulted?" I answered, "Yes". He, stated, "I can do that for you."

I was instructed to sit at his computer as he explained to me how "OWCP" were now using computers for submissions of claims. Mr. Stuckey indicated how the computer makes it quicker to get a claim processed. He stated, however, his computer was not yet connected but he would type the claim anyway. As well, Mr. Stuckey instructed me to enter a protected password into his computer as my signature. This he said, would insure that no one would be able to access my claim, without my permission.

Mr. Stuckey instructed me as to what to type on my claim. Immediately after typing in the information provided by Mr. Stuckey, I was instructed to enter a password. I was then instructed to sign a form CA-1, Federal Employee's Notice of Traumatic Injury. After signing the CA-1 form, I was given a Form Ca-1, Rev. Nov. 1989, which was already signed by Mr. Stuckey. Just prior to departing Mr. Stuckey's office, he, Mr.

Exhibit 21

Stuckey informed me that he would run the forms over to my supervisor, Rodney Kiscadden, for his signature.

The above procedure, utilized by Mr. Stuckey was a deliberate act to cause a delay or denial of workers compensation benefits. I have since learned that Mr. Stuckey should have given me the forms to complete and submit to my immediate supervisor. Additionally, Mr. Stuckey provided me with a Form CA-1, Rev. Nov. 1989, with his signature, with all instructions omitted. (The reverse sides blank) The use of the computer to file information, use of a password and providing blank forms with instructions omitted, and not providing me a CA-16 form to cover medical treatment and expense. I believe, were in violation of the laws and statutes as to filing for workers compensation benefits.

It is important to note that on October 21, 1999, five days before Mr. Stuckey had me file a CA-1 (Notice of Traumatic Injury), he was informed of the nature of my injury. John Snively, my therapist, at my instructions, contacted Raymer Kent, Mr. Stuckey's supervisor, and explained the nature of the injury and the recommended treatment. As such, Mr. Stuckey, knew or should have known the nature of my injury and the suggested treatment was not indicative of a traumatic injury, as would require the filing of a CA-1 (Notice Of Traumatic Injury). (Note: Mr. Snively's written comment on the initial evaluation, dated October 21, 1999, as to his telephone call to Raymer Kent) Additionally, Mr. Snively states that on October 21, 1999, he faxed a copy of the initial evaluation to Raymer Kent. (Note: Written statement provided by Phil Haven, dated December 13, 1999, as to faxed information to Raymer Kent)

On or about November 23, 1999, during a visit to Mr. Stuckey office, along with William J. Dumas, my OWCP representative, Mr. Stuckey, for the first time informed me that my claim for workers' compensation benefits was being controverted. He informed me that the controversion was "a Philadelphia OWCP controversion" and was not being controverted by the Veterans Administration. Further, Mr. Stuckey explained OWCP was controverting the claim because "something was amiss." As well, we requested to have the CA-1 withdrawn, with an explanation to OWCP and to have a CA-2 submitted for benefits. Mr. Stuckey refused to submit the CA-2.

On or about November 30, 1999, Mr. Dumas and I again had the occasion to visit Mr. Stuckey. During this meeting, Mr. Dumas requested I be given a CA-7, which had been previously denied. At this time a CA-7 was provided. As well, Mr. Stuckey again told me, "the claim was being held up by Philadelphia". When Mr. Dumas stated we would contact the

OWCP office in Philadelphia, Mr. Stuckey finally admitted he had personally controverted the claim. At no time previous to this, had Mr. Stuckey informed me that he or the VA had controverted the claim. Mr. Dumas reiterated his belief that CA-1 form was the incorrect form to be filed due to the nature of my claimed injury. At this point, Mr. Stuckey stated, "I thought it may be the wrong form but its okay, there will not be a problem with that ". During this meeting, Mr. Dumas asked Mr. Stuckey about the need for additional medical reports, at which Mr. Stuckey replied, " Lewis has failed to provide me with any additional medical reports ". However, prior to this conversation, Mr. Stuckey had never requested any additional medical documentation.

The Federal Employees Compensation Act, states I'm suppose to be informed of any controversion of my claim in detail of why it's being controverted. Within ten days of the controversion. Mr. Stuckey told me my claim was controverted on November 30, 1999, 29 days after he controverted on November 1, 1999. According to his letter we found in my file, in his office.

On or about December 13, 1999, on learning of our right to view my records, Mr. Dumas and I again visited Mr. Stuckey's office. I found in my records, a controversion letter, dated November 1, 1999, which was prepared and signed by Joseph Stuckey. The controversion was not my supervisor's decision, but that of Mr. Stuckey. My supervisor, who was in the best position to know what occurred, did not controvert the claim, as shown by his signature on the CA-1 and the subsequent CA-2. (Note: The narrative prepared by my supervisor, Rodney Kiscadden, as indicated on the CA-1 is missing. All information on CA-1 as proved by Mr. Kiscadden are contradicted by Mr. Stuckey) Mr. Stuckey's version of the facts concerning the racial harassment by Irvin Erickson was in no way factual but was based on his desire for reprisal and retaliation. Most importantly, Mr. Stuckey deliberately misled, OWCP, by stating in his controversion letter that I refused to provide medical documentation as to the cause of the injury.

Mr. Stuckey indicated in his controversion letter that I failed, on several occasions, to provide him with a requested Release of Information form. However, the records in Mr. Stuckey's possession included, a signed "Release Of Information" form, dated October 21, 1999, which was provided by the treating facility. (Note: The Release Of Information form was stamp dated as received by the VA, October 21, 1999). Though, the controversion letter may not have been the factor in denying me benefits, on the CA-1, the deliberate act of not obtaining and forwarding medical records was a factor.

On or about December 21, 1999, Mr. Dumas and I again visited Mr. Stuckey's office. At that time, Mr. Dumas asked Mr. Stuckey to show him a CA-2 form. When given the CA-2 form, Mr. Dumas and I immediately left Mr. Stuckey's office and proceeded to the office of my supervisor, Rodney Kiscadden. The CA-2 was partially completed by Mr. Kiscadden. Mr. Kiscadden had not yet completed his narrative. I was told to return the following day to sign all the documents. The following day, on arrival at Mr. Stuckey's office we were informed that Mr. Stuckey was not in. However, the CA-2 and attached forms were left with another employee, who instructed me to sign the CA-2. I refused to sign the CA-2 because the narrative prepared by Mr. Kiscadden was missing.

On or about December 23, 1999, during the early morning, I called Mr. Stuckey and informed him that I was concerned because Mr. Kiscadden's narrative was not included with the new CA-2. Mr. Stuckey stated Mr. Kiscadden was not in and would not return until after the holidays. Later that day, I found a message on my telephone answering machine from Mr. Stuckey, stating that Mr. Kiscadden had come in and submitted his narrative. After receiving the message, I called Mr. Stuckey's office. I was told that Mr. Stuckey had left for the day.

On December 28, 1999, Mr. Dumas and I went to Mr. Stuckey's office. Mr. Dumas and I reviewed the new CA-2 claim file, which was to be submitted to OWCP. The narrative prepared by me as well the narrative prepared by Mr. Kiscadden was missing from the claim file. When brought to Mr. Stuckey's attention, he retrieved my narrative from his desk draw and stated "Oh, I forgot to include it." Mr. Stuckey stated Mr. Kiscadden's narrative only contradicted the statement of Barbara Yeich, concerning comments made to her by Mr. Kiscadden.

I objected to Mr. Kiscadden's narrative not being included in the claim being submitted to OWCP. Additionally, Mr. Dumas and I took this objection to Mr. Kent. Mr. Kent then made the derogatory racial statement; "We have done enough for you people and will do no more."

At all times Mr. Stuckey refused to withdraw the CA-1 and re-file a CA-2 as requested. We had a "reasonable suspicion" that Mr. Stuckey was trying to impede or delay my claim. Several letters were forwarded to the agency's CEO, Charlene Szabo, in an attempt to have Mr. Stuckey file the correct form but without success. In fact, Ms. Szabo alluded to Mr. Dumas being the cause of the incorrect filing of the original CA-1. The representative statement signed by Mr. Dumas, at the behest of Mr. Kent, shows Mr. Dumas involvement in these matter beginning in mid November, 1999 a month after the original claim was filed and submitted to OWCP.



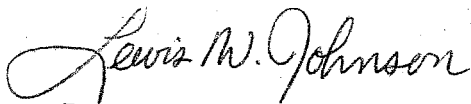
On January 28, 2000, Mr. Dumas and myself visited OWCP in Philadelphia by appointment to review my CA-1 and CA-2 claim on file. We learned that "initial evaluation" information was not a part of the CA-1 claim. Also, parts of the police reports were missing.

We were able to speak with the claims examiner Mr. McFeely who processed my CA-1 claim. Mr. McFeely stated "their wasn't enough medical info to support my claim and that why it was denied." We asked if he would have received my "initial evaluation", that supported a CA-2 claim what would have happen. He explained that he would have sent it back, and directed the agency to re-file my claim as a CA-2.

As far as me not providing medical information to Mr. Stuckey. He always had a "Release of Information" form, that he could have brought to me, at anytime, to check off what he wanted. Mr. Stuckey did not do this even after we found the "Release of Information" in my file, on December 13, 1999.

Mr. Stuckey, Mr. Kent and Mr. Kiscadden have not followed the guidelines in the "Injury Compensation for Federal Employees Publication CA-810". I believe they wrongfully impede my claim because of unlawful discriminatory reasons. I believe I'm black, and EEO activities are the bases for their behavior.

Sincerely yours,

  
Lewis Johnson

**Disability Benefits for Employees under the Federal Employees' Compensation Act (FECA)**

The FECA, which is administered by the Office of Workers' Compensation Programs (OWCP), provides the following general benefits for employment-related occupational disease or illness:

- (1) Full medical care from either Federal medical officers and hospitals, or private hospitals or physicians of the employee's choice.
- (2) Payment of compensation for total or partial wage loss.
- (3) Payment of compensation for permanent impairment of certain organs, members, or functions of the body (such as loss or loss of use of an arm or kidney, loss of vision, etc.), or for serious disfigurement of the head, face, or neck.
- (4) Vocational rehabilitation and related services where necessary.

The first three days in a non-pay status are waiting days, and no compensation is paid for these days unless the period of disability exceeds 14 calendar days, or the employee has suffered a permanent disability. Compensation for total disability is generally paid at the rate of 2/3 of an employee's salary if there are no dependents, or 3/4 of salary if there are one or more dependents.

If an employee is in doubt about compensation benefits, the OWCP District Office servicing the employing agency should be contacted. (Obtain the address from your employing agency.)

For additional information, review the regulations governing the administration of the FECA (Code of Federal Regulations, Title 20, Chapter 1) or Chapter 810 of the Office of Personnel Management's Federal Personnel Manual.

**Privacy Act**

In accordance with the Privacy Act of 1974 (Public Law No. 93-570, 5 U.S.C. 552a), you are hereby notified that:

- (1) The Federal Employees' Compensation Act, as amended (5 U.S.C. 8101, et seq.) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor. In accordance with this responsibility, the office receives and maintains personal information on claimants and their immediate families.
- (2) The information will be used to determine eligibility for and the amount of benefits payable under the Act.
- (3) The information may be used by other agencies or persons in matters relating directly or indirectly to the matter of the claim, so long as such agencies or persons have received the consent of the individual claimant, or complied with the provisions of 20 CFR 10.
- (4) Failure to furnish all requested information may delay the process, or result in an unfavorable decision or a reduced level of benefits (disclosure of a social security number is voluntary; the failure to disclose such number will not result in the denial of any right, benefit or privilege to which an individual may be entitled).

**Receipt of Notice of Occupational Disease or Illness**

This acknowledges receipt of notice of disease or illness sustained by:  
(Name of injured employee)

10-20-99

Lewis Johnson

I was first notified about this condition on (Mo., Day, Yr.)

At (Location)

Bldg #1

Signature of Official Superior

Title

Date (Mo., Day, Yr.)

Joseph R. Stuckey, Jr. Personnel Management Specialist

12-22-99

This receipt should be retained by the employee as a record that notice was filed.

Exhibit 22



**Disability Benefits for Employees under the Federal Employees' Compensation Act (FECA)**

The FECA, which is administered by the Office of Workers' Compensation Programs (OWCP), provides the following benefits for job-related traumatic injuries:

- (1) Continuation of pay for disability resulting from traumatic, job-related injury, not to exceed 45 calendar days. (To be eligible for continuation of pay, the employee, or someone acting on his/her behalf, must file Form CA-1 within 30 days following the injury; however, to avoid possible interruption of pay, the form should be filed within 2 working days. If the form is not filed within 30 days, compensation may be substituted for continuation of pay.)
- (2) Payment of compensation for wage loss after the 45 days, if disability extends beyond such period.
- (3) Payment of compensation for permanent impairment of certain organs, members, or functions of the body (such as loss or loss of use of an arm or kidney, loss of vision, etc.), or for serious disfigurement of the head, face, or neck.
- (4) Vocational rehabilitation and related services where necessary.
- (5) Full medical care from either Federal medical officers and hospitals, or private hospitals or physicians, of the employee's choice. Generally, 25 miles from the place of injury, place of employment, or employee's home is a reasonable distance to travel for medical care; however, other pertinent facts must also be considered in making selection of physicians or medical facilities.

At the time an employee stops work following a traumatic, job-related injury, he or she may request continuation of pay or use sick or annual leave credited to his or her record. Where the employing agency continues the employee's pay, the pay must not be interrupted until:

- (1) The employing agency receives medical information from the attending physician to the effect that disability has terminated;
- (2) The OWCP advises that pay should be terminated; or
- (3) The expiration of 45 calendar days following initial work stoppage.

If disability exceeds, or it is anticipated that it will exceed, 45 days, and the employee wishes to claim compensation, Form CA-7, with supporting medical evidence, must be filed with OWCP. To avoid interruption of income, the form should be filed on the 40th day of the COP period. Form CA-3 shall be submitted to OWCP when the employee returns to work, disability ceases, or the 45 days period expires.

For additional information, review the regulations governing the administration of the FECA (Code of Federal Regulations, Title 20, Chapter 1) or Chapter 810 of the Office of Personnel Management's Federal Personnel Manual.

**Privacy Act**

In accordance with the Privacy Act of 1974 (Public Law No. 93-579, 5 U.S.C. 552a) and the Computer Matching and Privacy Protection Act of 1988 (Public Law No. 100-503), you are hereby notified that: (1) The Federal Employees' Compensation Act, as amended (5 U.S.C. 8101, et seq.) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor. In accordance with this responsibility, the Office receives and maintains personal information on claimants and their immediate families. (2) The information will be used to determine eligibility for and the amount of benefits payable under the Act. (3) The information collected by this form and other information collected in relation to your compensation claim may be verified through computer matches. (4) The information may be given to Federal, State, and local agencies for law enforcement and for other lawful purposes in accordance with routine uses published by the Department of Labor in the Federal Register. (5) Failure to furnish all requested information may delay the process, or result in an unfavorable decision or a reduced level of benefits. (Disclosure of a social security number (SSN) is voluntary; the failure to disclose such number will not result in the denial of any right, benefit or privilege to which an individual may be entitled. Your SSN may be used to request information about you from employers and others who know you, but only as allowed by law or Presidential directive. The information collected by using your SSN may be used for studies, statistics, and computer matching to benefit and payment files.)

**Receipt of Notice of Injury**

This acknowledges receipt of notice of injury sustained by:  
(Name of injured employee)

*Lewis Johnson*

Which occurred on (Mo., Day, Yr.)

*10-18-99*

At (Location)

*Bldg. #1, 3rd Floor*

Signature of Official Superior

Title

Date (Mo., Day, Yr.)

*Joseph R. Stueben Jr.* *Personnel Management Specialist*

*10-26-99*

Injured Employee's Notification of Responsibilities

An Employee who sustains an on-the-job injury is responsible for:

1. Reporting on-the-job injury to supervisor immediately.
2. Obtain and complete the following forms from the supervisor:
  - a. For Traumatic injury, Form CA-1, Federal Employee's Notice of Traumatic Injury, - or -
  - b. For Occupational illness or disease, Form CA-2, Federal Employee's Notice of Occupational Disease, -and-
  - c. For any accident resulting in occupational illness or injury, VA Form 2162.
3. Report to Employee Health Clinic with your supervisor. Regardless of severity of the injury, you must report to the Employee Health Clinic for an initial evaluation in order to file an OWCP claim. If an employee does not report to Employee Health it may/will jeopardize the claim and payment of benefits. You must return the completed Medical Capabilities form to your supervisor immediately after receiving medical treatment.
4. Hand carry the following forms to the OWCP Specialist in Human Resources Management Service (HRMS) VA-2162, CA-1/CA-2 or CA-2a during administrative shift. Failure to do so may result in a delay of receipt of benefits. Compensation may be denied if notice of injury or occupational disease is not submitted within 30 days of injury. During nonadministrative shift, leave forms in the Employee Health Clinic.
  - a. Upon your reporting to the OWCP Specialist with completed forms, OWCP benefits will be explained. At this time you will select your Attending Physician and obtain authorization (Form CA-16) BEFORE you go for medical treatment to a non-VA provider. Except for emergency care, authorization may not be issued retroactively for past treatment.
  - b. The physician must be located within a 25 mile radius of your home or worksite.
  - c. Prior approval from OWCP must be obtained for non-emergency surgery.
  - d. Chiropractors are excluded from treating work incurred injuries except in very limited circumstances. If you wish to seek treatment from a chiropractor, obtain guidance from HRMS. (If the chiropractor is excluded, the government will not pay medical expenses incurred or lost time from work.)
  - e. To change physicians, a written request must be submitted to the Office of Workers' Compensation Program (OWCP). Only OWCP can approve a change of physicians except where your physician has referred you to another doctor.
  - f. The first treatment or examination by the Employee Health Physician or treatment by the Medical Officer of the Day (MOD) is not considered a selection of an attending physician.
  - g. If you have been examined and/or treated by the MOD, you must report to the Employee Health Clinic the next administrative workday for examination and report to the OWCP Specialist for instruction on OWCP regulations and official selection of an attending physician.
5. Promptly provide medical documentation from a private physician. Payment of medical expenses and continuation of pay (COP) is not authorized without medical documentation. Returning the CA-16 with the physician's section completed properly will give the necessary medical documentation. Other valid medical documentation are a completed CA-20, the physician's narrative statement, copies of progress notes, etc., which indicate the relationship of the medical condition to the work injury claimed and the work status of the employee, including any physical limitations imposed.
6. Employee must keep the supervisor and OWCP Specialist informed of their duty status and any physical limitations imposed by the physician. YOU ARE OBLIGATED TO RETURN TO FULL OR LIGHT DUTY WORK AS SOON AS YOUR DOCTOR ALLOWS YOU TO DO SO. Failure to report as directed will result in loss of compensation benefits.
7. Contact the OWCP Specialist in Bldg. 1, Room 32 or extension 4060 for information regarding policies, procedures and problems.

NOTE: Reimbursement for medical expenses and time lost is dependent upon acceptance of the claim by OWCP. If the claim is not accepted, the employee is responsible for payment of medical bills. All medical bills submitted to OWCP must be filed on an OWCP Form 1500.

I certify that on this date I have received a copy of "Injured Employee's Notification of Responsibilities." I hereby release any medical information pertaining to the above injury to Human Resources Management Service at Lebanon VA Medical Center for appropriate processing of my workers' compensation claim.

Lewis W. Johnson  
NAME

G-0496

10/24/99  
DATE

HUMAN RESOURCES MANAGEMENT SERVICE COPY

Exhibit 23

12-22-99 12:20PM

FROM PHILHAVEN MED RECORDS

TO 92285925

PUUZ/UUZ

Philhaven



283 South Butler Road  
P.O. Box 550  
Mt. Gretna, PA 17064  
(717) 273-8871

## AUTHORIZATION FOR RELEASE OF INFORMATION

I do hereby consent and authorize Philhaven to receive from/disclose to:

Name Joe Stuckey, VA Medical Center  
Address 1700 S Lincoln Ave., Lebanon, PA 17042  
Phone Number 272-6621, X 4060

Fax Number 228-5925

information from my medical record(s) related to my identity, diagnosis, prognosis and treatment (including diagnosis and/or treatment for mental health, drug/alcohol abuse and/or HIV-related information). The specific information to be received/disclosed includes:  
(Please mark and X in the correct column for each document)

Receive	Disclose		Receive	Disclose	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Discharge Summary	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Initial Evaluation/Admission Note
<input type="checkbox"/>	<input type="checkbox"/>	Social History	<input type="checkbox"/>	<input type="checkbox"/>	Psychological Evaluation/Summary
<input type="checkbox"/>	<input type="checkbox"/>	Immunization Record	<input type="checkbox"/>	<input type="checkbox"/>	Homebound Instruction Report
<input type="checkbox"/>	<input type="checkbox"/>	History & Physical	<input type="checkbox"/>	<input type="checkbox"/>	Patient Data Form
<input type="checkbox"/>	<input type="checkbox"/>	Outpatient Treatment Summary	<input type="checkbox"/>	<input type="checkbox"/>	Referral/Treatment Summary
<input type="checkbox"/>	<input type="checkbox"/>	Discharge Instructions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Psychiatric Evaluation/Summary
<input type="checkbox"/>	<input type="checkbox"/>	Alcohol and Other Drug Consult	<input type="checkbox"/>	<input type="checkbox"/>	Laboratory Reports
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other (list specific items):			

Progress Notes; any and all records (inpatient, outpatient, day hospital)  
written/verbal communication

I understand this information is to be used for the purpose of: (check as many as apply) ☐ Diagnosis ☐ Continuity of care ☐ Treatment planning ☐ Discharge planning ☒ Other: Workman's compensation claim

*This information is being disclosed from records whose confidentiality may be protected by Pennsylvania Law, Act 63, and/or Pennsylvania P.L. 817, and/or Federal Public Law 93-282, and/or Code of Federal Regulations, 42 (Drug and Alcohol treatment records), and/or Act 148, (Confidentiality of HIV-related Information Act). I understand the nature of this release and understand that I have the right to inspect material that is to be released. I understand that I may revoke this authorization at any time by notifying Philhaven.*

*This authorization shall be effective immediately and shall expire in one year from the date hereof or on \_\_\_\_\_, 19\_\_ and is valid for all medical record documentation during the effective period.*

I understand that I have the right to request a copy of this authorization and that I may revoke my consent at anytime by written notice Philhaven. Check one: ☐ patient accepted copy ☐ patient declined copy

X Lewis M. Johnson X 12-28-99  
Patient's Signature Date  
(or parent/guardian for child under 14 years of age)

X  
Relationship to Patient (to be completed only when parent/guardian or person with Power of Attorney authorizes release for the patient)

X Joseph B. Stuckey X 12-28-99  
Signature of Witness Date

G-0422

**THIS PORTION TO BE COMPLETED WHEN PATIENT IS UNABLE TO GIVE WRITTEN CONSENT**  
We, the undersigned, do verify that the above authorization has been read to the patient and that he/she understands the nature of the release and freely gives his/her verbal consent for release of the above information. The patient has also been informed that he/she may verbally revoke this authorization at any time.

Signature of Witness/Date

Signature of Witness/Date

Auth. for Release of Info.

PC-135A

01-99

Patient Name: Lewis Johnson

Patient Number: 124287

Date of Birth: 7/4/56

Exhibit 24



DEPARTMENT OF VETERANS AFFAIRS  
Medical Center  
1700 South Lincoln Avenue  
Lebanon, PA 17042

December 3, 1999

In Reply Refer To: 595/121

United States Department of Labor  
Office of Workers' Compensation Program  
Attn: Mr. Anthony McFeeley  
3535 Market Street  
Philadelphia PA 19104

Dear Mr. McFeeley:


On November 1, 1999 a CA-1 was submitted for Mr. Lewis Johnson, Case #03-0246931. A letter outlining the alleged incident as well as other documentation was also submitted with the claim.

Mr. Johnson presented the enclosed Discharge Instructions to my office on December 2, 1999. After a review of those discharge notes, it appears as if Mr. Johnson has had psychiatric concerns that have been ongoing and are far beyond the scope of the alleged work related incident.

Mr. Johnson has signed a release of information and I have requested a copy of the medical records from Philhaven. I will process those records to your office as soon as they are received. I am sure that when all of the records are presented it will provide a clear picture of Mr. Johnson's ongoing personal and family problems that are non-work related.

If I can be of further assistance, I may be contacted at (717) 272-6621, extension 4060.

Sincerely,

  
JOSEPH R. STUCKEY, JR.  
Personnel Management Specialist

Enclosure

G-0448

Exhibit 25



Philhaven


 83 S Butler Road  
 P.O. Box 550  
 Mt. Gretna, PA 17064  
 (717) 273-8871

## Discharge Instructions

\* Please take this document to your aftercare appointments

Program:	Adult Partial		Admit Date:	10/22/99		Discharge Date:	11/12	
SUMMARY	Presenting Problem: Lewis was referred to the Adult Partial program w/ DDX issues by Dr. Brinsler due to stress, tension, and work related issues evidenced by increased agitation w/ homicidal thoughts, maddening, irritability, panic attacks, excessive worrying, and explosive anger, as well as depressive symptoms.							
	Course of: Lewis participated in all scheduled groups and activities. He identified stressors due to work related issues, family conflict, and self concept issues. He was able to address issues of self esteem, anger, fears, rejection, and addiction. Lewis was able to give constructive feedback & receive support from others. Marital session addressed issues of poor communication skills and family dynamics.							
	Discharge Type: <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Against Medical Advice <input type="checkbox"/> Outpatient Commitment							
	Discharge Recommendations: Lewis' mood has improved significantly. He still struggles w/ self esteem and anger issues. Lewis should continue on medication as prescribed and follow up w/ phs for med. management & accept therapy to continue address self concept and family issues.							
	Discharge To: Self							
MEDICATIONS	Allergies & Reactions: NKDA							
	Name	Dosage	Directions	Date Rx. Given	#	Refills		
	Celexa	20 mg.	1 tab p.o. HS	11/5/99	15	1		
Blood Levels Medication:			Date Drawn:	Value:	Date Due:			
Medication supervision required Yes No								

 Discharge Instructions  
 PC-240 01-99  
 C:\USERS\FORMS\PC-240 WPD

G-0449

 Patient Na Johnson, Lewis W.  
 Patient Nu 124287  
 Admission Date Of Birth: 7/4/1956  
 Admission Date: 10/22/1999  
 Patient Ac  
 Patient Ph



A F T E R C A R E  P L A N S	Special Instructions:	
	<input type="checkbox"/> Special Diet:	
	<input type="checkbox"/> Avoid driving until given permission by your physician.	
	<input checked="" type="checkbox"/> Avoid alcohol and drug use due to serious interactions with your medications.	
	<input type="checkbox"/> You may return to work/school. Letter provided <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
	Providers marked with an "X" below participated in an interagency meeting regarding aftercare.	
	Primary Therapist: <u>E. Laine Howell</u>	Phone: <u>273-8871</u>
	Address: <u>Phillyhaver / Mt Gretna</u>	Appt. Time/Date: <u>11/17/99</u>
	Comments:	Discharge letter/Summary to follow: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Medication Management: <u>Richard Pakala</u>	Phone: <u>273-8871</u>
Address: <u>Mt Gretna / Phillyhaver</u>	Appt. Time/Date: <u>11/23</u>	
Comments:	Discharge letter/Summary to follow: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
S C H O O L	Primary Care Physician:	Phone:
	Address:	Appt. Time/Date:
	Discharge letter/Summary to follow: <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Comments:	
	Contact Person:	Phone:
School:		
Address:	Discharge letter/Summary to follow: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Ed Therapy Summary: Contract was made with school personnel regarding discharge plans and recommendations. A copy of the educational recommendations will be sent in the educational therapist's report to:		
Name:	Phone:	
Address:	Appt. Time/Date:	
		Discharge letter/Summary to follow: <input type="checkbox"/> Yes <input type="checkbox"/> No
Comments:		
If you have a problem contact _____ at _____		
In an emergency contact Crisis Intervention at _____		
The above instructions, including the effects of medications, have been reviewed with me and I understand them.	Patient Signature: <u>Lewis M. Johnson</u>	Date: <u>11-10-99</u>
	Parent or Legal Guardian Signature: _____	Date: _____
	Staff Signature: <u>E. Laine Howell</u>	Date: <u>11/10/99</u>
	Staff Signature: <u>Travis Johnson</u>	Date: <u>11/12/99</u>

034-504



DEPARTMENT OF VETERANS AFFAIRS  
Medical Center  
1700 South Lincoln Avenue  
Lebanon, PA 17042

December 29, 1999

In Reply Refer To: 595/121

United States Department of Labor  
Office of Workers' Compensation Program  
3535 Market Street  
Philadelphia PA 19104

Dear Claims Examiner:

On October 26, 1999, a CA-1, Notice of Traumatic Injury was submitted by Mr. Lewis Johnson, SSN 184-48-8509. The case number assigned to this case was 03-0246931. On December 15, 1999, Mr. Johnson received a Notice of Decision that the claim for Traumatic Injury was denied, as the medical evidence was not sufficient to establish that his condition was caused by the claimed incident. We have attached a copy of that decision for your review.

There was some confusion in communication at the time the initial claim was filed. Mr. Johnson contends that this claim should have been filed as a CA-2, Notice of Occupational Disease. Therefore we have assisted him in the completion of the attached CA-2.

We have also provided copies of the witness statements of all the individuals involved, as well as a copy of the police report that was conducted concerning the incidents on October 13, 18, and 19, 1999. After a review of Mr. Johnson's narrative and that of the witness statements, it appears as if there are some inconstancies as to what actually occurred during these incidents.

We have asked Mr. Johnson on several occasions to provide the medical documentation of the treatment that he received at Philhaven. On November 30, 1999, a letter was sent to Philhaven requesting this medical information. On December 21, 1999, a second request via telephone was made to Philhaven. I was referred to medical records and informed that the records could not be released without a consent form and that it is preferred that it be a Philhaven Release of Information Form. A form was requested and on December 23, 1999, a request was made of Mr. Johnson to sign this release in order to obtain the necessary medical records. On December 28, 1999, I again explained the reason for the requested medical records and Mr. Johnson signed the Release of Information. I have forwarded these medical records for your review.

G-0710

Exhibit 26

A thorough review of the medical information strongly suggests that Mr. Johnson has a background of preexisting non-work related issues. These issues and concerns are addressed in the attached medical information.

We contend that a "causal relationship" between Mr. Johnson's current medical condition and the work environment are not supported by the medical information provided by the treating physician.

If additional information is required, I may be contacted at (717) 272-6621, extension 4060.

Sincerely,

  
JOSEPH R. STUCKEY, JR.  
Personnel Management Specialist

Enclosures

G-0711



DEPARTMENT OF VETERANS AFFAIRS  
Medical Center  
1700 South Lincoln Avenue  
Lebanon, PA 17042

November 30, 1999

In Reply Refer To: 595/121

Philhaven  
Attn: Richard S. Pakola, M.D.  
283 South Butler Road.  
P.O. Box 550  
Mount Gretna, PA 17064

Dear Doctor Pakola:

Mr. Lewis Johnson, an employee of the Lebanon VA Medical Center, is currently receiving treatment at Philhaven. Mr. Johnson has filed a workers' compensation claim with the U.S. Department of Labor.


In an effort to evaluate the progress of treatment of Mr. Johnson, updated medical information is required. I have enclosed a Release of Information that has been signed by Mr. Johnson during a review of his benefits under the Federal Employees' Compensation Act (FECA).

Please provide the medical records of Mr. Johnson's treatment so that this information may be processed to the Department of Labor. At the present time Mr. Johnson's claim is under development and a prompt request in providing this information would expedite the adjudication of his claim.

I have also enclosed a form CA-20A, Attending Physician's Supplemental Report, requesting information on the diagnosis as well as the prognosis of Mr. Johnson's treatment.

If you have any questions concerning the aforementioned request, I may be contacted at (717) 272-6621, extension 4060.

Sincerely,

  
JOSEPH R. STUCKEY, JR.  
Personnel Management Specialist

Enclosures

G-0454

Exhibit 27

**EXHIBIT F**



William J. Dumas  
20 Dumas Lane  
Jonestown, PA 17038

May 11, 2000

Administrative Judge Donna Nutter Rodwell  
U. S. Equal Employment Opportunity Commission  
The Bourse, Suite 400  
21 South Fifth Street  
Philadelphia, PA 19106-5848

In the matter of: Lewis W. Johnson

v.

Togo D. West, Jr., Secretary,  
Department of Veterans Affairs

EEOC Hearing No. 170-AO-8163X

Agency Case No.  
98-2320

Hon. Judge Rodwell:

Pursuant to your order, in the above captioned matter, the Complainant is forwarding the case numbers and/or identifying factors of other complaints involving this complainant.

1. ORM Case No. 200H-0542-99-5484

- issues: (1) Harassment by a fellow co-worker (white).  
(2) Management failure to take appropriate action once harassment was reported.  
(3) Failure of the Agency to provide a money award to Black employees, as given to other employees (White)

G-0806

1

01

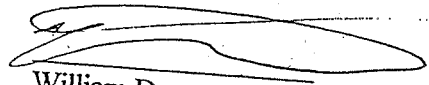
2. ORM Case No. 200H-1663

issues: (1) Reprisal by agency officials in workers compensation claim procedure due to prior EEO activity.

3. Obstruction of justice by Lebanon VA police by covering up action of white employee and preventing complainant from filing charges, including with local law enforcement agencies.

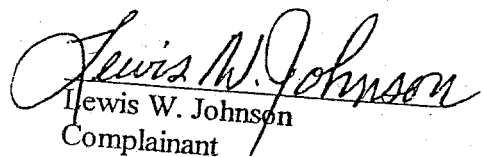
4. Employees repeating slanderous statement made by alleged unknown parties.

Respectfully submitted,



William Dumas  
Complainant Representative

Reviewed and Approved,



Lewis W. Johnson  
Complainant

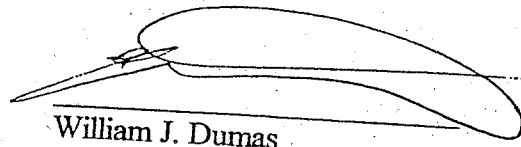
G-0807

CERTIFICATE OF SERVICE

I, William J. Dumas, in the matter of Johnson v. West, EEO Complaint No. 170-AO-8163X, do hereby certify that I served upon the parties shown, a copy of a letter dated, May 11, 2000, addressed to Administrative Judge Donna Nutter Rodwell, a letter dated May 11, 2000, addressed to Cynthia A. Williams, Law Clerk (counsel for the Agency) and a letter dated, May 11, 2000, addressed to Joseph Stuckey, Human Resources, (for the Agency), by United States, first class mail, to:

Administrative Judge Donna Nutter Rodwell  
U. S. Equal Employment Opportunity Commission  
The Bourse, Suite 400  
21 South Fifth Street  
Philadelphia, PA 19106-5848

Cynthia A. Williams, Law Clerk  
VA Office of Regional Counsel (642/02)  
University and Woodland Avenues  
Philadelphia, PA 19104

  
William J. Dumas

G-0808

03

UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
PHILADELPHIA DISTRICT OFFICE  
21 South 5th Street, Suite 400  
Philadelphia, PA 19106-2515

Lewis W. Johnson,  
Complainant

v.

Togo D. West, Jr., Secretary,  
Department of Veterans Affairs,  
Agency.

EEOC Hearing No.  
170-A0-8163X

Agency No.  
98-2320

**ORDER**

The Agency is **ORDERED** to produce copies of the counselor reports and formal complaints in the following cases (filed by Complainant) pending before the Agency:

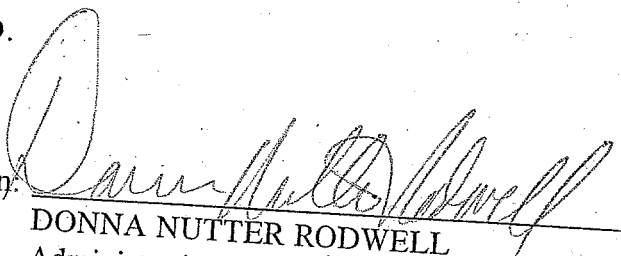
- 1) ORM Case No. 200H-0542-99-5484
- 2) ORM Case No. 200H-1663

Those documents must be submitted on or before June 1, 2000.

These matters will probably not be consolidated with the above-captioned case. However, the parties are encouraged to include all pending cases in any settlement discussions/negotiations.

It is so ORDERED.

For the Commission:



DONNA NUTTER RODWELL  
Administrative Judge  
Telephone No. (215) 451 - 5781  
Fax No. (215) 451 - 5848

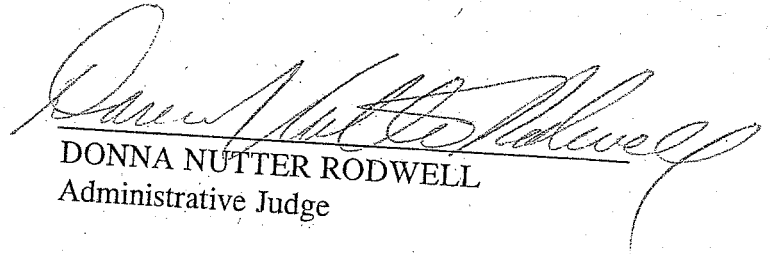
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order was sent by me by first-class mail, postage prepaid, on the 16th day of May, 2000, to the following:

Lewis W. Johnson  
1025 Harmony Hill Drive  
Lebanon, PA 17046

William J. Dumas  
20 Dumas Lane  
Jonestown, PA 17038

Cynthia A. Williams, Law Clerk  
Office of Regional Counsel (642/02)  
Dept. of Veterans Affairs Medical Center  
3900 Woodland Avenue  
Philadelphia, PA 19104

  
DONNA NUTTER RODWELL  
Administrative Judge



William J. Dumas  
20 Dumas Lane  
Jonestown, PA 17038

May 11, 2000

Joseph Stuckey  
Human Resources  
Lebanon Veterans Administration  
Medical Center  
1700 South Lincoln Avenue  
Lebanon, PA 17042

Dear Mr. Stuckey,

Pursuant to our telephone conversation, held on Thursday, May 11, 2000, regarding the Agency's desire to discuss settlement in the matters pertaining to Mr. Lewis Johnson.

It is my understanding and I have explained to Mr. Johnson, the following:

- 1.) The Agency is suggesting that Mr. Johnson file for disability retirement, which the Agency will support.
- 2.) The Agency's desire to combine each and every EEO complaint filed by Mr. Johnson, as part of any settlement offer.
- 3.) That there is no definitive suggestion as to the OWCP matter, at this time.
- 4.) That Mr. Johnson submit in writing what he is seeking in any settlement agreement.
- 5.) That a settlement conference be held at a date as yet unscheduled.

As you probably know, the matter of the none hire, Agency Case No. 98-2320, is presently before Administrative Judge Donna Nutter Rodwell. In as much as this is the only matter presently assigned to an administrative judge, we are of the opinion that any settlement discussions must be in conjunction with that particular case. Additionally, Administrative Judge Rodwell has issued an order by which settlement, consolidation of complaints, settlement authority and certain other issues, shall proceed in these matters.

Therefore, we are suggesting that the parties meet, to include Agency officials, as soon as possible, to discuss these matters, so as to be in conformity with Judge Rodwell's order.

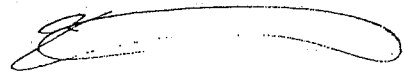
G-0804

06

Additionally, that counsel for the Agency, in the matter, presently assigned to Administrative Judge Rodwell, be notified forthwith, by the Agency, as to the Agency's actions and decisions in these matters.

As always, please feel free to contact at 1-717-865-9401, should you wish to discuss this telephonically.

Thank you,



William J. Dumas  
Complainant's Representative

G-0805

William J. Dumas  
20 Dumas Lane  
Jonestown, PA 17038

May 11, 2000

Cynthia A. Williams, Law Clerk  
VA Office of Regional Counsel (642/02)  
University and Woodland Avenues  
Philadelphia, PA 19104

EEOC Hearing No.  
170-AO-8163X

Agency Case No.  
98-2320

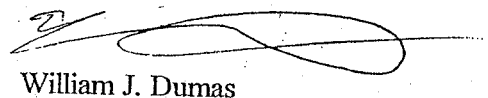
Dear Ms. Williams,

Enclosed, please find a letter sent to Joseph Stuckey, Human Resource Office, Lebanon Veteran Administration Medical Center, dated May 11, 2000. It is my belief, that the issues discussed in this letter, can not proceed independent of the above captioned case. Further, the Administrative Judge assigned to this case, has ordered certain procedures be followed.

Though your offices have yet to respond to the complainant's past request for discussion as ordered by Administrative Judge Donna Nutter Rodwell's order, we are requesting your participation in the matters as indicated in the attached letter.

Should you wish to discuss this matter, please feel free to contact me at 1-717-865-9401.

Thank you,



William J. Dumas

G-0803

08



DEPARTMENT OF VETERANS AFFAIRS  
OFFICE OF RESOLUTION MANAGEMENT  
151 Knollcroft Road Building 16  
Lyons NJ 07939

August 13, 1999

Mr. Samuel Alitto  
EEO Manager  
Department of Veterans Affairs  
Medical Center  
1700 South Lincoln Avenue  
Lebanon, PA 17042

Dear Mr. Alitto:

This in reference to the EEO Complaint of Mr. Lewis Johnson, Case No.: 98-2320 filed on August 25, 1998, I have been assigned to investigate his complaint. I am requesting the following documents by close of business August 27, 1999.

1. Merit Promotion File of Vacancy Announcement NO. OC-98-38.
2. Merit Promotion Plan that was in effect at the time of the selections.
3. Race and Color of all the candidates that applied for the position of Housekeeping Aide under vacancy announcement OC 98-38
4. Position Description of the Housekeeping Aide vacancy in Extended Care that was filled under Announcement No. OC-98-38.
5. Position Description of the complainant's position at the time of the selection.
6. List of Housekeeping Aide vacancies in Extended Care from July 1996 through July 1998.
7. List of promotions and lateral assignments in Environmental Management Service and Extended Care broken down by Race and Color from July 1996 through July 1998.

Please ask the employee that will compile this information to certify it as well.

Please advise me of the availability of the following named employees the week of August 27, 1999, Alice Fidler, Suzette Flashel Umlauf, Barbara Kohr, Wanda Miller, Randall Houck, and the Chief of Education & staff Development.

Once this information has been compiled please send it to me at the address listed below via overnight mail.

Gregory E. Jones, Sr.  
Office of Resolution Management  
Lyons Field Office  
Bldg 16  
151 Knollcroft Rd.  
Lyons NJ 07939

*Gregory E. Jones, Sr.*  
Gregory E. Jones, Sr.,  
EEO Investigator

were rated equally on the supervisory KSAO's. Ms. Fidler also said according to the complainant that she selected Mr. RH because she felt that he would fit better with the team and he worked better around patients. The complainant found the explanation to be false and discriminatory. Dissatisfied with the reasons for his non-selection the complainant sought EEO counseling. When EEO counseling did not result in an informal resolution, the complainant filed a formal complaint of discrimination on August 25, 1998.

### III. Issues and Basis

Was the complainant discriminated against on the bases of his Race and color (African-American, Black) when on July 15, 1998, he was not selected for a full-time position as a Housekeeping Aid WG-2, on the Extended Care Unit 19-3?

### IV. Survey of the General Environment

As of August 25, 1998, the total workforce for the Lebanon VA Medical Center was 924. There was total of 25 African-American/Black employees or 3% (see exhibit C-7). Extended Care had 181 employees, of which 6 or 3% were African-American. The Operational Section had 48 Housekeeping Aids (HKA), 3 or 6% were African-American, Extended Care did not have any African-American HKA's.

#### Application Activity for Full-time Housekeeping Aid WG-2 Announcement No. OC 98-38.

##### Race/Color

<i>Total Applicants</i>		<i>Qualified &amp; Not selected</i>		<i>Selectee</i>	
Employees	Race/Color	Employees	Race/Color	Employees	Race/Color
*1	*AA/Black	*1	*AA/Black	*0	*AA/Black
8	N-AA/NB	7	N-AA/NB	1	N-AA/NB

\*Denotes Complainant's Class

AA denotes African American

N denotes non

B denotes Black

NB denotes non-Black

#### Selection pattern of the Extended Care Unit Supervisor from July 1996 through July 1998.

Year	Selected		Applicants	
	*AA/B	N-AA/NB	AA/B	N/AA/NB
1998	0	0	0	0
1997	1	8	1	16
1996	0	0	0	0

\*Denotes Complainant Class



### V. Summary and Analysis

The complainant alleges that he was discriminated against because of his race and color when he was not selected for the position of full-time Housekeeping Aid, WG-2, announcement number OC-98-38. The complainant stated that the agency advertised for one full-time Housekeeping Aid position for which he applied. The vacancy was filled with a non-African American/white employee who had less seniority and he felt that since he (complainant) was the most senior employee, he should have been selected. The complainant stated that the selectee had worked as a part-time Housekeeping Aid for less than a year and held a full time position for less than a month (see exhibit B-1, page 14, lines 6-8).

The complainant testified that he felt he was qualified to do the job because he had worked as a full time Housekeeping Aid since March 1997 and from January through April 1998 he was detailed to the Extended Care ward, where he performed housekeeping duties such as stripping and waxing the floors (see exhibit B-1, page 10, lines 8-12, and page 14, lines 3-5).

The complainant was informed by the selecting official that the reason he was not selected was because "he probably could not work well with the patients or the team" (see exhibit B-1, page 10, lines 24-25 and page 11, lines 1-4, 7-12).

The complainant said that around August 11, 1998, Mr. Randall Houck, Nursing Assistant, told him that he heard Ms. Fidler say that "she did not want too many blacks on her ward because she was afraid of losing control" (see exhibit B-1, page 12, lines 14-17). The complainant alleged that Mr. Houck claimed that Ms. Wanda Miller, LPN-3 and Ms. Margaret Cromer, Chief of Education and Nursing Development were present when Ms. Fidler made the alleged comments. According to the complainant, Mr. Houck told him that that Ms. Cromer informed Ms. Fidler that she was "bordering on discrimination" when she made those comments" (see exhibit B-1, page 12, lines 22-23).

Ms. Margaret Cromer, (White/Caucasian), Chief of Education and Staff Development, testified that she was not personally involved in the selection process in question. She stated that the complainant mentioned to her that he was not selected for the position because of his race (see exhibit B-2, page-5, lines 1-4).

Ms. Cromer said that she did not recall hearing the statement attributed to Ms. Fidler (see exhibit B-2, page 5, lines 15-17). Ms. Cromer also said she did not hear Ms. Fidler make any disparaging remarks against African-American/Black individuals during the time the selections were made (see exhibit B-2, page 5, lines 21-25 and page 6, lines 1).

Ms. Wanda Miller, (White/Caucasian), LPN-3, witness for the complainant, testified that she did not have knowledge of this complaint. Ms. Miller further stated that she does not recall Ms. Fidler making the alleged racial comment (see exhibit B-3, page 5, lines -5-9, 13-16).

Mr. Randall Houck (White/Caucasian), a Nursing Assistant and witness for the complainant, testified that he has worked with Ms. Fidler for seven years and recalls an incident three or four years ago when an African-American applied for a Nursing Assistant position on the ward managed by Ms. Fidler. He testified Ms. Fidler said that "she did not want any more of them on the floor because we already had several of them on the floor and we did not need any more trouble" (see exhibit B-4, page 5, lines 1-7). Mr. Houck attested that Ms. Cromer and Ms. Miller witnessed this comment.

Ms. Alice Fidler (White/Caucasian), the Nurse Manager identified as Responding Management Official (RMO), testified that she was the selecting official for the position in dispute. She testified that she did not pay attention to race or color when making her selection for the Housekeeping Aid position (see exhibit B-5, page 5, lines 16-19 and page 6, lines 23-25, page 7, lines 1).

Ms. Fidler said she selected Mr. RH because she felt that he was more experienced than the complainant. She stated that she required someone who had knowledge of the reactions that would occur when mixing chemicals and the selectee had gained that knowledge through his prior military experience where he set up the Material Safety Data Sheets (MSDS) programs (see exhibit B-5, page 5, lines 22-25). She also felt that someone who taught MSDS would have a good understanding of the need to be careful with mixing chemicals, and would know what to do in the event of a spill (see exhibit B-5, page 6, line 1-5). Ms. Fidler further testified that she did not interview the candidates, but rather arrived at her final decision by evaluating the applications, KSAO's and her observations of the candidates work as they rotated through the Extended Care ward (see exhibit B-5, page 7, lines 2-6).

When asked if she made the statement that she wanted to maintain racial balance on her unit and did not want to hire African American/Blacks she said no (see exhibit B-5, page 9, lines 1-5).

Ms. Barabara Kohr (Caucasian/White), Nurse Manager, and Team Leader of the Hospice Unit, testified that she was not directly involved in the selection process but "I sat with her as we reviewed the supervisory and employee supplementals" (see exhibit B-6, page 4, lines 16-17). Ms. Kohr also said that the selectee had seventeen (17) years of Housekeeping experience (see exhibit B-6, page 7, lines 10-11). Ms. Kohr stated that in addition to the selectee's years of experience, he was more detailed in listing his experiences in the employee supplemental, especially in the area of Isolation Environment. He also had some experience working in the emergency room, Intensive Care Unit (ICU), and had conducted training classes on the safe use of chemicals (see exhibit B-6, page 8, lines 1-6).

When asked if she heard Ms. Fidler state that if she hired too many African-Americans/Blacks she would not be able to maintain racial balance, she said that neither she nor Ms. Fidler were concerned with maintaining a racial balance on the Extended Care unit (see exhibit B-6, page 8, lines 8-12).

Ms. Suzette A. Flashel-Umlauf, (Caucasian/White), Human Resource Management Specialist (HRMS), testified that the Housekeeping Aid position in question was announced under an open and continuous vacancy announcement. She said the candidates were rated, ranked and referred to the selecting official for consideration (see exhibit B-7, page 4, lines 6-10). Ms. Flashel-Umlauf stated that the selecting official was not required to interview any of the candidates, but if she interviewed one, all candidates would have to be interviewed (see exhibit B-7, page 5, lines 13-18). According to Ms. Flashel-Umlauf the selecting official followed the proper procedures when

selecting for this position. The position according to Ms. Flashel-Umlauf was a straight hire or a reassignment (see exhibit B-7, page 7, lines 17-18).

This case will be analyzed under the disparate treatment theory of discrimination.

### Prima Facie Disparate Treatment

In a disparate treatment case, the complainant must first present a prima facie case of discrimination. That is he must put forth facts, which, if true and unrebutted, would create an inference of discrimination. To establish a prima facie case of discrimination under the disparate treatment theory, a complainant must show:

1. He is a member of a protected class. The complainant is an African-American/Black.
2. He suffered an employment related harm for which there is a remedy. The complainant applied for and was not selected for the Housekeeping Aid position, announcement OC-98-38.
3. He can identify at least one similarly situated individual, not of his protected class who was treated more favorably. The candidate selected for the position was non African-American/non-Black.

### Burden of production

In order to dispel an inference of discrimination management is not required to prove that it did not discriminate, however, the burden of production shifts to management to articulate legitimate non-discriminatory reasons for its actions. Ms. Fidler (RMO) testified that she did not select the complainant because she felt that the selectee had the most potential to perform well, and would provide the best environment for the patients on the unit. After reviewing the applications, KSAO's and the candidates' performances, as they rotated through the Extended Care Unit, she felt that she selected the best candidate.

### Pretext

The final burden shifts to the complainant, to demonstrate that the reasons articulated by management are pretextual. The complainant may do this by direct proof of discriminatory motive, or by demonstrating that the articulated reasons are unworthy of belief. The RMO denied discriminating against the complainant because of his race. The record shows that the disparaging statement alleged to have been made by Ms. Fidler was made 3 ½ years earlier and the only one of the three employees who were reported to have been present when she made the comment, testified that the RMO had made the comment.

*Gregory E. Jones, Sr.*  
Gregory E. Jones, Sr., EEO Investigator

12/17/99  
Date

CASE NO. 98-2320

IN THE MATTER OF,  
LEWIS JOHNSON

Telephonic

Claimant, Deposition of:

-vs-

RANDALL HOUCK

LEBANON VA MEDICAL CENTER,

Respondent.

T R A N S C R I P T of Deposition  
Proceedings held in the above-entitled matter, as  
taken by and before SUSAN M. OLIMPAITO, a Certified  
Shorthand Reporter and Notary Public of the State of  
New Jersey, held at the OFFICE OF RESOLUTION  
MANAGEMENT, 151 Knoll Croft Road, Building 16, Lyons,  
New Jersey, 07939 on Friday, November 5, 1999,  
commencing at 10:55 a.m.

REPORTING SERVICES BY:

North Jersey Reporting  
113-A Johnson Avenue  
Hackensack, N.J. 07601

1     A P P E A R A N C E S:

2           GREGORY JONES,  
3           EEO Specialist  
4           Office of Resolution Management,  
5           151 Knoll Croft Road,  
6           Lyons, NJ 07939

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1 R A N D A L L H O U C K,

2 Having first been duly sworn, testified as follows:

3 EXAMINATION BY MR. JONES:

4 Q. Please state your full name and spell it  
5 for the record?

6 A. My full name is Randall Houck.

7 Q. And spell it for me please?

8 A. R-A-N-D-A-L-L H-O-U-C-K.

9 Q. Please state your race?

10 A. I'm white.

11 Q. Please state your color?

12 A. I'm white.

13 Q. Mr. Houck, do you have a representative?

14 A. No.

15 Q. How long have you been employed at the  
16 Lebanon VA?

17 A. Before I go any further I'd like to comment  
18 that I'm only doing this out of courtesy to you, sir,  
19 and also that the person, the victim here that's  
20 being talked about, this has nothing to do between my  
21 relationship and the person I'm about ready to talk  
22 about. I'm not trying to do anything out of  
23 retaliation. I'm trying to do this because the union  
24 has asked me to come forth and speak the truth.

25 Okay?



1 Q. Okay. How long have you been employed at  
2 the Lebanon VA?

3 A. Fourteen years.

4 Q. How long have you been in your present  
5 position?

6 A. Fourteen years.

7 Q. How do you know the complainant, Mr. Lewis  
8 Johnson?

9 A. I met him through employment there at the  
10 VA.

11 Q. Were you privileged to a conversation by  
12 Mrs. Alice Fiddler where she made some, allegedly  
13 made some statement concerning the racial makeup of  
14 her ward and wanting to keep some type of balance on  
15 her ward?

16 A. Yes I was.

17 Q. Can you share those statements with me  
18 today?

19 A. I worked for Alice Fiddler for seven years  
20 on an Alzheimer's floor and during that time there  
21 was an incident that came up where a black man who  
22 was a janitor wanted to put in for the position of  
23 nursing assistant on our floor.

24 He was, during that time I was speaking to Alice  
25 Fiddler or she was speaking to me and Ward Miller

1 and referring to the fact that this fellow, this  
2 black man had put in for the job. During that time  
3 she made the statement, I don't remember the exact  
4 words, but the impression was quite clear to me it  
5 was along the line that we didn't want any more of  
6 them on the floor because we already had several of  
7 them on the floor and we don't need no more trouble.

8 Q. And when was this statement made, what year  
9 approximately?

10 A. Now you're asking for a lot. It was three  
11 or four years ago maybe.

12 Q. Did you ever hear Mrs. Fiddler make any  
13 statements in relationship to Mr. Lewis Johnson's  
14 application for a position as housekeeping aid on  
15 extended care?

16 A. No. I never heard anything about that only  
17 from Lewis himself.

18 Q. Who was in the presence of this  
19 conversation taking place between Miss Fiddler and  
20 yourself?

21 A. Wanda Miller. She was an LPN on the floor  
22 at the time.

23 Q. Was there anyone else?

24 A. No, I don't think so.

25 Q. In recent years have you ever heard Miss

1 Fiddler make any racial statements or racial slurs  
2 concerning African Americans?

3 A. Not that I can remember.

4 Q. This concludes your testimony --

5 A. One more thing I think is very relevant to  
6 this case. I had heard that Alice Fiddler took this  
7 to one of our clinical coordinators Peggy Kroemer  
8 (phonetic) and made this statement to Peggy Kroemer  
9 about how she could keep this black man off her  
10 floor. Peggy Kroemer made the statement to her  
11 you're about this close to discrimination so be  
12 careful what you say.

13 Q. And when did she make that statement to  
14 Miss Kroemer?

15 A. That was during the time that, you know,  
16 three to five years ago that she was trying to keep  
17 this black man off the floor. So Peggy Kroemer is  
18 aware of that. I don't remember how that got back to  
19 me but that did get back to me that she did talk to  
20 Peggy Kroemer about keeping this fellow off.

21 Q. Was this the position that Mr. Johnson  
22 applied for or was this another position?

23 A. No. It was Mr. Henry Williams applied  
24 for. He was a black housekeeper at the time who was  
25 applying for the nursing assistant position on our

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1 floor. Now he eventually did get the job because she  
2 backed off after Peggy Kroemer warned her about the  
3 position she was taking.

4 Q. Okay. Thank you, Mr. Houck, and this  
5 concludes your testimony.

6 A. Thank you, sir.

7 ( Whereupon statement concluded at 11  
8 o'clock a.m.)

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OV-18-99 THU 15:11

VOCATIONAL REHAB

FAX NO. 717270354

P. 13



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

September 22, 1999

To All VA Employees

G-093

Our mission is to "serve America's veterans and their families with dignity and compassion and be their principal advocate in ensuring that they receive medical care, benefits, social support, and lasting memorials promoting the health, welfare, and dignity of all veterans in recognition of their service to this Nation." This requires a high performing workforce. Harassment, including sexual harassment in the workplace, impairs our ability to perform our mission and demeans us all. It cannot be permitted.

Harassment is defined as unwelcome verbal or physical conduct based on an employee's race, color, religion, sex, national origin, age, disability, or sexual orientation. It is unlawful if it unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or abusive working environment. It also undermines the integrity of the employment relationship, weakens morale, and creates a harmful and threatening atmosphere. I embrace a *three-part fundamental principle*, which I am requiring all managers and senior executives to follow.

The *first part is prevention*. Education and deterrence are critical to preventing sexual and other forms of harassment and discrimination. VA employees must know the full meaning of harassment, its impact on the work environment, and what actions will occur should employees be found to have engaged in or suffered from it.

The *second aspect is immediate and aggressive executive action*. VA will swiftly and fully investigate complaints of harassment. Our new Office of Resolution Management (ORM) has independent authority to thoroughly investigate allegations of discrimination, including sexual harassment, and to elevate allegations of sexual harassment to the appropriate executive level. When notified by ORM of a complaint, senior VA management is responsible for 1) immediately intervening to correct the problem, 2) communicating to the victim his or her right to pursue a complaint of discrimination, and 3) providing for the victim's safety and security. VA must seek to ensure that no employee is subject to retaliation because he or she has alleged or cooperated in the investigation of alleged unlawful harassment.

Last, should an investigation reveal that misconduct occurred, *we will take appropriate disciplinary and adverse action*, up to and including the removal, against those who engage in harassing behavior or other discriminatory conduct, or who retaliate against any VA employee who cooperates, participates, or testifies in.

Appropriate action will also be taken against those who discriminate. 21

NOV-18-99 THU 15:13

VOCATIONAL REHAB

FAX NO. 7172722854

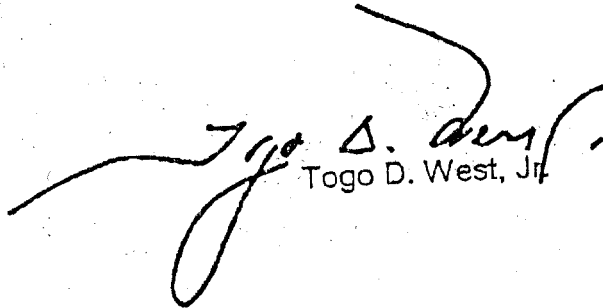
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Page 3.

Subject: Prevention of Workplace Harassment

access to a computer at work. I urge each of you to obtain, read, and retain a copy of this useful resource.

Our success depends upon the willingness of each VA employee to practice fairness, respect, and tolerance. Your full cooperation and adherence to the law is expected.



Togo D. West, Jr.

G-095



# FORMAL COMPLAINT OF DISCRIMINATION

Lewis W. Johnson  
1025 Harmony Hill Drive  
Lebanon, PA 17046

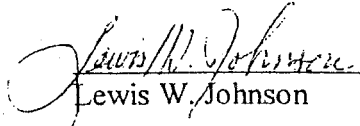
Mr. Lewis W. Johnson, was a member of an Environmental Management Services, " Float Group ", consisting of four men, including Louis Chandler ( black ), Irvin Erickson ( white ) and Norman ( last name unknown ), ( white ). They worked consistently together, from about August, 1997 to January, 1998. The only break in Mr. Johnson's membership with this " Float Group " was from January, 1998 to April, 1998. This break was due to a special project Mr. Johnson volunteered for. Due to the manner in which Mr. Johnson complete this special project, other departments adopted it and it is now standard operating procedure in the Medical Center. After, completion of the special project Mr. Johnson returned to the " Float Group ". Each of the four men, interchangeably, did the same job and each job was a team effort.

On several occasions, Johnson noticed an award recognition, to this group, posted in areas of the Medical Center. Mr. Johnson was proud of this recognition and spoke about in on several occasions. In fact, Johnson, himself a Vietnam Era veteran, had received other special notice for going out of his way, to help when he could. Many fellow workers commented on Johnson's award for volunteering to drive veterans, on his off time, to certain scheduled functions.

On/or about first week of September, 1999, Johnson over heard a conversation by a group of EMS employees concerning the award received by the " Float Group " and the money that came with it.

On further inquiry, Johnson obtained copies of the award and the statement for issuance of the award. The award statement single out two members of the team, the white members and totally disregard Johnson and Chandler, the black members of the team. Additionally, it has come to light that the two white members receiving the awards were instructed not to reveal said monetary awards. In fact, they may have received other awards for the same efforts put forth by the entire team.

Since questioning these acts in February, 1999, Johnson's duties were curtailed to exclude certain assignments done by the " Float Group ".

 12-16-98  
Lewis W. Johnson

August 3, 1998

To: Ms. Lena Mitchell  
Office of Resolution Management  
Tel: 908-580-3511  
Fax: 908-604-5827

Re: EEO Complaint of Louis Johnson

From: Suzette Flashel Umlauf  
Personnel Management Specialist  
VA Medical Center  
Lebanon, PA 17042

Attached is the information request:

- \* The Lebanon VAMC employs a total of 48 employees in the occupational series Housekeeping Aid (HKA).

- \* Hospital-wide, three of these employees are African American. All three are assigned to the Operations section.

- \* Extended Care does not have any HKA employees who are African American.

If I can be of any assistance, please contact me at (717) 272-6621, ext. 4059.

On our About 3:00pm on 12/13/99 in Bld. 1  
and floor lobby I WAS RACIALLY HARASSED  
by Eric Erickson.

As I <sup>AS I WAS</sup> ~~was~~ walking thru the lobby, I PASSED  
Louis Chandler heading for the freight ELEVATOR, I  
WAS NOW approaching Eric E. who was standing  
NEAR the doors of the OR. Eric started  
ON ME by SAYING this statement. "HEY LEWIS  
do you want to hear what people are saying  
about you." I put up my left hand and said  
"NO!" "I don't want to hear it." I was about  
5 ft from him when I said that. He then called  
call for Louis C. by saying "HEY Lou, HEY Lou"  
"Listen, I going to tell Lewis what people are  
saying about him," He then put his arm and hand and

in my path to slow my movement,

When he slow me down by blocking my path, he  
then said, "Lewis, people calling you a white guy in  
black skin." After hearing that statement, I went  
thru the doors leading to the freight ELEVATOR. I felt  
sick, I started to shake. This man has been  
harassing me since I been in EMS. I starting to

G-0666

FEEL VERY FEAR-FUL OF LOSING MY JOB. SO I NEED  
SOMETHING DONE TO STOP THIS RACIAL HARASSMENT.

Lewis W. Johnson  
10/15/97

G-0667

12/30/99 11:44 FAX 717 22P 907

VA MED CENTER LEBANON

006

Narrative As Provided by  
Lewis W. Johnson

Wednesday, October 13, 1999

8:00 AM Johnson (black male) meets Chandler (black male) and Erickson (white male) in the hallway of building #1. Erickson stated to Johnson, "Hey Lewis, let me tell you what people are saying about you." Johnson responds I don't want to hear it." Erickson then places his body in Johnson's path to prevent him passing, shouts to Chandler, "Hey Lou, I'm going to tell Lewis what people are saying about him." Chandler does not respond in any manner. Erickson then stated to Johnson, "People are saying you are a white man in a black man's skin." Johnson shoves his way past Erickson and walks quickly away. As Johnson leaves he hears Erickson loudly laughing.

2:00 PM Near the Environmental Management Services (EMS) office, Johnson meets Chandler in one of the tunnels. Johnson stated to Chandler, "I am going to make a complaint on what Erickson said to me." Chandler replied, "You got to do what you got to do, I understand." Johnson then stated, "Someone will probably talk to you." They then parted, going in different directions.

Thursday, October 14, 1999

(7:30 AM) During the morning Johnson met his supervisor, Rodney Kiscadden, near the EMS office. Johnson inquires what forms were needed to make a complaint on a fellow employee. Kiscadden indicated he did not know but would find out and let Johnson know, during the course of the day.

(1:30 PM) Kiscadden informed Johnson that he would need a 'Point of Contact' form to file a written complaint on an employee.

(2:00 PM) Johnson obtained a 'Point of Contact' form from the Nursing Station in building 1-3A.

Friday, October 15, 1999

(2:30 PM) Johnson met with Kiscadden in the EMS office. Johnson explained the nature of the complaint and told Kiscadden he had a 'rough draft' that needed to be typed. Kiscadden then left the office at which time Glenn Definbach (a Housekeeping Aid), who had been sitting in an adjacent office, came out and asked Johnson, "What's going on with you, Irv and Louis and this racial remark?" Johnson asked Definbach, "What did you hear?" Definbach explained to Johnson, he had over heard a conversation between Erickson, Chandler and Ms. Lynette Brady (EEO personnel), concerning a racial remark made toward Johnson.

Monday, October 18, 1999

(8:30 AM) While at his assigned work location, Johnson telephoned the Office of Resolution Management (ORM) and explained to Ms. Mitchell, who answered the telephone, the incident concerning the racial remark by Erickson, which occurred on October 13, 1999. Ms. Mitchell stated she would forward the complaint to a Counselor, who would contact Johnson.

(10:20 AM) Johnson was in building #1, ward 3A, his assigned work location, standing at the Nursing Station, holding a conversation with Ward Clerk, Barbara Yeich. Erickson entered

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12/30/99 11:45 FAX 717 228 5907

VA MED CENTER LEBANON

007

the area and from about twenty feet away shouted, " Hey Lewis. I want to talk to you. " Johnson responded, " I don't want to talk to you. " Johnson began walking in the opposite direction from Erickson. A few seconds later, Johnson felt a slight blow to the middle of his back. Glancing over his shoulder, Johnson realized Erickson had caught up to him and was using his shoulder to cause these blows to Johnson's back. Each blow to Johnson's back caused him, Johnson to stumble. Again, over and over, Erickson repeated, " I want to talk to you and tell you what they are saying. " Each time Johnson responded, " Leave me alone, I don't want to hear it. " This occurred approximately fifteen feet in one direction and fifteen feet in the opposite direction, until they again arrived at the Nursing Station. On arriving again at the Nursing Station, Johnson ran through the opening to the Nursing Station, to a nearby bathroom and locked himself in. After an unknown amount of time, Johnson exited the bathroom, figuring Erickson had left the area. On realizing Erickson was no longer in the area, Johnson telephoned Carolyn Mcguigan, his department chief and was told by her secretary to report to Mcguigan's office at 10:45 AM. After speaking to this secretary, Johnson called ORM and explained he had just been assaulted. Ms. Mitchell told Johnson someone would contact him.

(10:45 AM) Johnson met with Mcguigan and explain everything that had occurred with Erickson from October 13, 1999 up to that point. Mcguigan summoned Kiscadden into her office and Kiscadden confirmed previous complaints from Johnson regarding Erickson. Mcguigan completed a ' Point of Contact ' form and Johnson left the office.

#### Tuesday, October 19, 1999

(8:15 AM ) Johnson reported to his assigned work area, building #1, ward 3A. Johnson and Yeich discussed what occurred the previous day. Yeich, during this conversation stated she had seen everything that had occurred including Erickson hitting Johnson. Yeich went on to explain to Johnson that she was extremely upset due to a conversation she had with Kiscadden. Yeich stated the first thing asked her by Kiscadden was, " So, whose side are you taking? "

(9:30 AM) Erickson appeared in building #1, ward 3A, Johnson's assigned work location. Erickson looked directly at Johnson, stopped and smiled very broadly. Erickson then went into the work closet assigned to Johnson. Erickson exited the work closet, smiled again at Johnson and went into the shower room. Johnson went over to close the door to the work closet, which had been left open by Erickson. Erickson then came out of the shower, again smiled broadly at Johnson and left the area. Johnson noticed something in Erickson's hand but did not see what it was. Johnson immediately called the Veterans Administration Police and reported all that had occurred. Johnson was instructed to come to the police station in order to make a full report.

(9:45 AM) Johnson arrived at the VA police station and gave a full report as to every thing that had occurred, beginning October 13, 1999.

#### Wednesday, October 20, 1999

(7:45 AM) Johnson arrived at work and was informed he was assigned to building #1, ward 3, ICU. He was also informed that Erickson was assigned to the same building and was moving furniture from floor to floor. Johnson stated that's not right or words to that affect and began to cry. Johnson stated he felt sick and requested sick leave in order to go home. Kiscadden stated to Johnson, " Sit and calm down and I'll go talk to the chief about you going home on sick leave. " As Kiscadden left, Definbach, who was in the next room, came out and inquired if Johnson was okay. Kiscadden returned and told Johnson it was okay for him to go home on sick

G-0669



12/30/99 11:46 FAX 717 228 707

VA MED CENTER LEBANON

008

leave but "they" wanted to talk to him first. Johnson asked to be allowed to wait in his van. Prior to going to his van, Johnson called Robert Dennis, union steward, and asked him to meet him at his van because he, Johnson needed help. A few minutes later, Dennis arrived at Johnson's van, at which time Johnson explained that his supervisors were forcing him to work in the same location as Erickson. Dennis stated to Johnson he would go talk with them. Dennis returned and stated senior management had informed him that Erickson would not bother him again. At that point a VA police officer arrived at the van; the officer and Dennis escorted Johnson to building #1, ward 3-ICU. As the police officer and Dennis began to leave, Johnson was told Erickson would be coming to his assigned area to remove furniture. Johnson began to shake and asked the two men not to leave. Johnson then observed Dennis use the telephone. However, he was not made aware to whom the call was made. Nor did Johnson hear the conversation. After the telephone conversation, Dennis instructed Johnson to return with him to building # 2, where they were met by Chief of Police Dennis Herb, Chief of Operations Muratits, Chief of Support Carolyn McGuigan and Kiscadden. Kiscadden explained to the group, in detail, what had been occurring between Erickson and Johnson, since October 13, 1999. Johnson was told the incidents were very serious but however, Erickson would not bother him, Johnson again. Johnson was told he could be assigned to another building, if he so desired. McGuigan stated to Johnson, " You can go home on sick leave but when you return I want you to sit with Mr. Erickson, talk about this, shake hands and make up."

(3:30 PM) Johnson visited his doctor, Earl Brinser, 405 Cumberland Street, Lebanon, PA 17042. After this session with Dr. Brinser, Dr. Brinser, referred Johnson to Phil Haven Mental Health Facility. Further, Dr. Brinser gave Johnson three prescription slips, dated October 20, 1999, with his medical instructions, to wit:

1. Excused from work from October 21, 1999 through October 24, 1999 and to return to work on October 25, 1999. This slip had a notation, " Unable to work " It was signed by Dr. Brinser.
2. A prescription for medication, dated October 20, 1999, to include two refills. This was signed by Dr. Brinser.
3. A statement dated October 20, 1999, suggesting treatment, his findings and the cause. The statement as written by Dr. Brinser, " Counseling. Re: stress, tension, fear, work related issues."

#### Thursday, October 21, 1999

(5:30 AM) Telephoned EMS ( employer ) and reported off as per doctors instructions.

(10:00 AM) Went to Phil Haven Outpatient Clinic per Dr. Brinser's, his physician, instructions. An initial evaluation was prepared by the Outpatient Department and faxed to Raymer Kent, Human Resources Manager, Lebanon, V. A.

#### Friday, October 22, 1999

(9:00 AM) Entered Day Hospital program at Phil Haven Mental Health Facility. Johnson instructed by Dr. Pakola, his treating physician, at Phil Haven, not to return to work, in particular at the Lebanon Veterans Administration Medical Center. Treatment to be on going.

*Lewis W. Johnson* 12-21-99  
Lewis W. Johnson

G-0670

02/02/00 WED 09:25 FAX 7172219600

Don Bailey

002

Created by LEWIS JOHNSON Sr.

Incidents of Racism, Harassment, racial intimidation and reprisal that I experience at the VA at Lebanon, Pa .

1. September of 1992: As a patient at the Lebanon VA hospital. I was harassed by a black employee who was a rehab tech. The incident happened in the dinning room in building 18. I was standing in the food line waiting for it to move. When John Turner(rehab tech) approached me. I said something about the up coming dance to him. He said to me, "put this on your shoulder". The item was a badge with a monkey on it. I placed it between my T-shirt and the shirt I had on. The badge fell to the floor. He told me to pin it on the outside of my shirt. I did. I walk up the line a little more, when I come to a white female kitchen worker . Mr. Turner then pushed my shoulder with pin on it . He said to me "Tell her what's on your shoulder". Action taken: Mr. Turner was given a 6 months abolishment. I received Counseling.
2. July of 1994: While working the night shift. (12mid-8am)About 3:30am I'm bathing a pt. when I hear a call bell sound off. I responded. It was acrossed the hall from me. Pt. bed was flooded with tube feeding. I called the RN in charge, told her what I found. She asked "whose pt is it? "I stated " its Ms. Kopenex" . I was told to find her and tell her. I found her sleeping in the lunch room. I woke her and told her about the pt. I reported back to RN and told her of my findings. I was told to start cleaning up the pt. and she'll get Ms. Kopenex. 45 minutes later I was finished cleaning the pt. Nobody shows up to help me. I asked later what happen. I was told by the RN, that she took Ms. Kopenex out for a smoke to wake her up. Action taken: I wrote a two page memo to my head nurse Jackie Brown. I felt like

G-0671

02/02/00 WED 09:26 FAX 7172219600

Don Bailey

003

Created by LEWIS JOHNSON Sr.

Incidents of Racism, Harassment, racial intimidation and reprisal that I experience at the VA at Lebanon, Pa .

this was reprisal for making a complaint. Because nothing happened. Her non-action hurt my feelings. The

message I got out of that was. Shut up and when I see things like that just do what you are told. And be quiet. This made me feel like I wasn't worth nothing.

3. September 1994: I reported an incident about a pt to a LPN, Bruce Zellmen. I was brought up on patent abuse charges. I was moved to 1<sup>st</sup> shift, from nights. The LPN went to 2<sup>nd</sup> shift. I was given a slip of paper saying that It was unfounded, two months later. ACTION: I felt this was reprisal and intimidation for the complaint I made against two of my co-workers a month or two ago.

4. June of 1995: Will working as a nurse assistant on 1-2a. I was approached by a white female co-worker Elaine Kopenex. She said to me "Mr. P. wants to know where's the nigger at."/: Action taken: I verbally reported to my head nurse Jackie Brown. I kept after it , because Ms. Brown kept giving me the run around. I felt reprisal for making the complaint.

5. December 1995: I walked into the nurses station , when I notice my charge nurse , doing the "work schedule" with a nurse assistant Dennis Firestine. He stated "Let Lewis work with me , so I can work him like a slave". Action taken: 6 months abonishment.

G-0672

6. January 1996: During that disciplinary meeting with Mr. Firestine. My head nurse Ms. Brown accused me of not helping a fellow employee.

02-02-00 WED 09:26 FAX 717 9600

Don Bailey

004

Created by LEWIS JOHNSON Sr.

Incidents of Racism, Harassment, racial intimidation and reprisal that I experience at the VA at Lebanon, Pa .

This blatant reprisal in front of the chief of staff Ms. Hachert was shocking. I stated " I'm the one who wrote someone up for not helping out with the pt". I was grilled about the actuation placed on me by Ms. Brown. We were asked to meet again about it in a couple of days. Ms. Brown was to bring her witness RN Helen Crawford. I was asked to bring my copy of the "Point of Contact" because Ms. Brown couldn't remember me giving her one.

7. January 1996: A couple days following that meeting that meeting with Ms. Brown. Dennis Swegert and myself were assigned to the b-side. We were on the a-side listening to that evening report. Night shift staff RN Ms. Crawford was doing her rounds on the b-side. When she returned to us, we discussed the evening report and left for the b-side. About 40 minutes into our rounds we found a Hispanic pt. laying on the floor in urine. Mr. Swegert immediately called Ms. Crawford about the pt., so we could fill out a fall report. Ms. Crawford said she knew that he was on the floor and not to worry about him. We were very upset about what happened. Ms. Crawford never told us that he was on the floor during the evening report. We wrote the incident in the pt's chart. I wrote up a "Point of Contact" to take to my next meeting with Ms. Brown next Tuesday.

G-0673

8. January 1996: Tuesday present at the meeting was, Ms. Brown, Ms. Hachert and a union steward. I gave Ms. Brown the "Point of Contact" about the

02/02/00 WED 09:27 FAX 717 9600

Don Bailey

005

Created by LEWIS JOHNSON Sr.

Incidents of Racism, Harassment, racial intimidation and reprisal that I experience at the VA at Lebanon, Pa .

Hispanic pt we found. Ms. Brown then passed it on to Ms. Hachert. Ms. Brown stated, she found her "Point of Contact". Ms. Hachert questioned the whereabouts of Ms. Crawford. I was told the meeting was closed. I was told months later, that the incident was placed in a quarterly report. I felt this was reprisal and intimidation from Ms. Brown, for writing a "point of contact" on Mr. Firestine for saying that "he wanted to work me like a slave".

9. August 31, 1997, Henry Williams and myself were hired together in "EMS". That was the beginning of the belittling and harassment from Mr. Erickson and Mr. Chandler. They were telling people that we couldn't do housekeeping work as good as they could. Mr. Williams couldn't handle it. He transferred to a NC VA In November of 1997. I volunteered for a detail to get away from them in January 1998.

10. July 17, 1998: I went to the Human Resource office to find out who was hired for housekeeping position. Ron Hall was hired. I felt I was discriminated against because I wasn't selected for a housekeeping position on 19-3.

11. July 20, 1998: I felt my supervisor assigned me to 19-3 to rub it in my face about my non-selection to that ward. I believe this was reprisal, because I used the union to get the detail in January "97".

G-0674

12. July 20, 1998: I called the Union president, Peg Winters to ask what I can do about the non-selection. I was told "nothing". I felt sick about that



02/02/00 WED 09:27 FAX 717 219600

Don Bailey

000

Created by LEWIS JOHNSON Sr.

Incidents of Racism, Harassment, racial intimidation and reprisal that I experience at the VA at Lebanon, Pa .

answer. I went to her office. My first question to her was about an audit of the selection. She said no. Ms. Winters kept insisting that I couldn't do anything. Now I began feeling very depressed. Because I'm a dues paying union member, and I feel my union is discriminating against me.

13. July 21, 1998: I contacted my department union steward William Mc Cracken. I told him what was going on. He said I couldn't do anything. That response upset me. I had my union contract with me. At 9:15am we went to the union office to talk to union president and chief steward Len Hickerd. After opening the union contract and showing them my rights to an audit, the next 2 ½ hours, I was grilled and harassed on why I wanted an audit. I was still denied my rights to an audit. I was told to speak with the selecting official. I felt this was a form of racial intimidation because I learned Mr. Hull joined the union on the July 15, 1998. Two days before the selection for the housekeeping job on 19-3.

14. July: I set up a time to talk with Ms. Fidler. We met that afternoon around 1:15pm. She told me that we were equal. She picked Mr. Hull because she felt he would "fit in" with the team better than I would. Also, that he works well with patents better than me. That answer angered me, because I felt I was being discriminated out of a job because I was black. Ms. Fidler was quoted saying "I don't want to many blacks on the floor because I may lose control". Action taken: EEO

G-0675



02/02/00 WED 09:28 FAX 7172272600

Don Bailey

007

Created by LEWIS JOHNSON Sr.

Incidents of Racism, Harassment, racial intimidation and reprisal that I experience at the VA at Lebanon, Pa .

15. July 22, 1998: I called in sick. I couldn't handle being put on 19-3 again, plus all the other stuff with my union. I called ORM. I called our employee's "EAP" Allen Burgess staff psychiatrist to help me with stress and depression of these job related issue's that I'm having.. I left his office and went straight to my private doctor Mr. Brinser. He prescribed medicine for stress and strain because of job related issue's.

16. August 1998: I canceled my vacation. I Thought my supervisor would change my schedule . They didn't. I came in to pick up my uniforms on my day off and found out I was AWOL the day before. I asked my supervisor Mike Brennan for al and was told OK, put in. A month went by when, I needed to check my leave to take time off to move into my new house. I found out that I had an "AWOL" place in my records. I went to my foremen Dennis Firestine and ask why didn't he tell me. His response was "you should have check your pay stub". I was also told that, that my foreman Mr. Firestine or supervisor Mr. Kiscadden couldn't change the schedule while Mr. Brennan was off. I felt sick, and very depressed.

G-0676

17. August and September 1998, I kept writing requests for a copy of the audit to my Union president with a co-worker Brian Williams. She knew I had a time restriction to put an EEO complaint in on my non-hire. I file the EEO complaint without the audit. I asked the Union president for a written reason for not honoring my request for an audit. At the next union

02/02/00 WED 09:28 FAX 7172 9600

Don Bailey

008

Created by LEWIS JOHNSON Sr.

Incidents of Racism, Harassment, racial intimidation and reprisal that I experience at the VA at Lebanon, Pa .

meeting in September I asked her in front of the union body, about 25 people. Ms. Winters told the body and myself, that she would have to have a lawyer to give me my request. This made me very depressed. I knew then she wasn't going to help. I felt my union was making sure that I don't get the job. Action taken: In October I submitted an informal grievance. Which I created from our union contract. My Housekeeping dept. rejected it. The union rejected it too. I called FLRA about the audit and the AWOL. FLRA sent me the paper work to file a complaint against my union. The FLRA person stated, he would have to contact AFGEE headquarters about him sending me papers to file a complaint against union. All of a sudden we had a meeting with the District #3 Rep. The union president was told to fix my problems. The AWOL was reduced to leave without pay. I was able to review my audit at this meeting.

18. February 1999: I walk into our EMS office to talk with my supervisor Michael Brennan about awards. I asked how can I put myself into position to get an award. He said "I can't tell you that". Luckily for me Kevin W., a work-leader spoke up for me by saying "that was a legit question". Mr. Brennan responded "You'll have to volunteer". From that time until the present, I haven't been put on any waxing jobs. By waxing I can volunteer to come in early. His actions, following that conversation, were very stressful to me. I felt I was being punished for just asking a question. Plus, I volunteer the whole year of 1998.

G-0677

02/02/00 WED 09:29 FAX 717 9600

Don Bailey

009

Created by LEWIS JOHNSON Sr.

Incidents of Racism, Harassment, racial intimidation and reprisal that I experience at the VA at Lebanon, Pa .

19. June 1999: I received an award for helping to extinguish a fire in a van. I was ridiculed and harassed by my co-worker Mr. Erickson. This happen in front of Tony Mayberry, Bill Mc Cracken, my other co-workers and friends. This was very humiliating to me.

20. June 1999: I was walking threw building 17 ground level when I notice my co-worker Mr. Erickson struggling with some waxing and buffing equipment. I asked if I could help. He started to ridicule and harass me on how I can't do this kind of work. He also stated that he's been telling people that I can't do this type of work. Action taken: I reported immediately to my supervisor Rodney Kiscaden. He said, "he will look into it, but why are you in my office now." I told him I was on my break. He looked at his watch and I left. I follow up on it the next week with him and he said he forgot about it. This non-action when I make a complaint made feel like I'm a nobody. I also felt like this was reprisal and intimidation for making a complaint about someone. I stayed away from Mr. Erickson.

G-0678

21. September 1999: While setting in the smoking shelter. A co-worker Ervin Erickson, stated that they(management) should change the names on that award posted on the bulletin board. To Norman and himself. Because they are the only one's that got some money for it. I look into it and found out that they did receive a "float group" award. I felt that I was discriminated against and left out of the award because I was black. There are two whites and two blacks in our float group.

02/02/00 WED 09:29 FAX 717: 9600

Bailey

010

Created by LEWIS JOHNSON Sr.  
Incidents of Racism, Harassment, racial intimidation and  
reprisal that I experience at the VA at Lebanon, Pa .

The two whites got the award. Plus this was a year  
later that I found out about this. So it was suppose to be  
a secret.

22. October 13,1999: I was walking threw the lobby  
area from one work area to another. In building 1-ward-  
2. When Ervin Erickson, put his arm out to stop my  
movement to make a derogatory racial commit to me,  
While I was approaching him He said " Lewis let me tell  
you what people are saying about you" I said "I don't  
want to hear it". Because I was trying to move away from  
him, he finally cut off my path to say. "People say you are  
a white guy in black skin" This commit made me sick  
and depressed.

23. October 14 and 15 1999: On three different  
occasions I talk with my supervisor Mr. Kascaden about  
making a complaint about another co-worker. He never  
asked me what happen or anything. He just told me what  
paper work to get. I felt like my problems didn't mean  
anything to him. His non-action felt like reprisal and a  
form of intimidation.

G-0679

24. October 18,1999: I called the EEO and reported  
the commit said to me by Mr.Erickson around  
8:00am. At 10:15am Mr.Erickson came to my work  
area to assault me verbally and physically. Action  
taken: I called the Chief of my department Ms.  
Mcguigan. I told her what happen and that I was

02:02:00 WED 09:30 FAX 717 219600

Don Bailey

011

Created by LEWIS JOHNSON Sr.

Incidents of Racism, Harassment, racial intimidation and reprisal that I experience at the VA at Lebanon, Pa .

feeling sick and wanted to go home. I was told to fill out a "point of contact" form and I could go. The VA police wasn't called and I wasn't asked to go to employee health. I felt her non-action racist, because a black man file a complaint of racial harassment and assault against a white man. Action taken: EEO complaint filed.

John Turner, Mike Brennan, and Elaine Kopenex do not work at the VAMC Lebanon. Everyone else whose names I mention, to my knowledge as 10-20-99 still work at VAMC Lebanon. They can be reach threw the Human Resource office. By contacting Ray Kent, at (717)-272-6621 ask for his extension.

The problems with OWCP specialist, Mr. Stuckey I can not talk about at this time, because it started 10-21-99 an ended 1-31-00.

\_\_\_\_\_  
Date\_\_\_\_\_

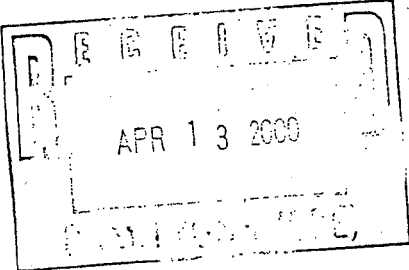
G-0680

Apr 13 00 01:54p

Bailey

221 9600

P.2

Department of Veterans Affairs		COMPLAINT OF EMPLOYMENT DISCRIMINATION	
1. NAME (Last, first, middle initial) (Please print) Johnson, Lewis W.		2. MAILING ADDRESS 1025 Harmony Hill Dr. LEBANON, PA 17046	
		3a. WORK TELEPHONE NUMBER (Include Area Code) (717)-272-6621 Ext 4665	
		3b. HOME TELEPHONE NUMBER (Include Area Code) (717) 270-0454	
4. ARE YOU: <input checked="" type="checkbox"/> A VA EMPLOYEE <input type="checkbox"/> AN APPLICANT FOR EMPLOYMENT <input type="checkbox"/> A FORMER VA EMPLOYEE		5. JOB TITLE, GRADE AND SERIES Housekeeping Aid WG-2 5b. SERVICE/SECTION/PRODUCT LINE ENVIRONMENTAL MANAGEMENT	
		6. NAME AND ADDRESS OF VA FACILITY WHERE DISCRIMINATION OCCURRED LEBANON VAMC 1700 South Lincoln Ave. So. Lebanon, PA 17042	
INSTRUCTIONS: For each employment related claim(s) that you believe was discriminatory, list the bases for your complaint: (list one or more): Race (Specify), Color (Specify), Religion (Specify), Sex (male or female), Sexual Orientation, National Origin (Specify), Age (Provide date of birth), Disability (Specify), and Reprisal for prior EEO activity or having opposed discrimination.			
7. BASIS SEE Attached		8. ISSUE(S) (What employment related claim(s) - personnel action(s), incident(s), or event(s), that caused you to file this complaint? Briefly, describe what happened below. Use an additional sheet of paper if necessary.) SEE Attached	
		9. DATE OF OCCURRENCE (Include the most recent date(s)) SEE Attached	
			
10. WHAT RESOLUTION ARE YOU SEEKING? G-0168			
11a. DO YOU HAVE A REPRESENTATIVE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		11b. IF "YES," IS HE OR SHE AN ATTORNEY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
		11c. PROVIDE THE NAME, ADDRESS, AND TELEPHONE NUMBER OF YOUR REPRESENTATIVE William Dumas 20 Dumas Lane Jonestown, PA 17038 (717)-865-9401	
12a. HAVE YOU CONTACTED AN EEO COUNSELOR? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		12b. NAME OF EEO COUNSELOR George Irvin	
		13. DATE OF INITIAL CONTACT WITH ORM 2-14-00	
14. NOTE: If you contacted an EEO Counselor more than 45 calendar days after the Date(s) of Occurrence, item 9 above, or if this complaint is filed more than 15 calendar days after receipt of a Notice of Right to File a Discrimination Complaint from an EEO Counselor, you must explain why you were untimely in seeking EEO counseling or in filing your EEO complaint. Provide your explanation on a separate sheet of paper.			
15a. HAVE YOU FILED A UNION GRIEVANCE ON ANY OF THE ISSUE(S) LISTED ABOVE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		15b. IF "YES," LIST THE ISSUE(S) AND DATE GRIEVANCE FILED	
		16a. HAVE YOU FILED AN APPEAL WITH THE MERIT SYSTEM PROTECTION BOARD (MSPB) ON ANY OF THE ISSUE(S) LISTED ABOVE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
		16b. IF "YES," LIST THE ISSUE(S) AND DATE MSPB APPEAL FILED	
17a. HAVE YOU FILED THIS COMPLAINT WITH ANYONE ELSE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		17b. IF "YES," PROVIDE THE NAME AND ADDRESS DATE FILED 4/13/00 J. N. J. N.	
18. SIGNATURE OF COMPLAINANT (Do not print) Lewis W. Johnson		19. DATE 4-12-00	



Apr 13 00 01:54p

Bailey

221 9600

P.3

COMPLAINT OF EMPLOYMENT DISCRIMINATION  
FORM 4939

Additional sheet.

## Item 7. Basis:

1. Reprisal and retaliation due to prior EEO activities.

On October 18, 1999, I filed an EEO complaint of harassment, verbal harassment, stalking and assault, based on race/color against Irvin Erickson, a white Lebanon VA Medical Center employee. I also alleged that management failed to take appropriate action once informed of the on-going actions of Irvin Erickson.

2. Race

African-American

3. Color

Black

4. Sex

Male

The on-going acts of harassment, verbal harassment, stalking and assault, caused me to become ill and seek medical attention. As a result, I became disabled and attempted to apply for workers' compensation benefits due to a work related illness. Lebanon VA Medical Center employees, Raymer Kent, Joseph Stuckey and Rodney Kiscadden, all white, sought to prevent and/or delay the receipt of workers' compensation benefits, by circumventing the application process, due to reprisal and retaliation.

G-0169

## Item 8. Issue(s)

1. On or about, October 26, 1999, I arrived in the Human Resources Offices and informed Mr. Stuckey, that I wanted to apply for workers' compensation benefits, as I was instructed by Union Representative Robert Dennis. Mr. Stuckey used trickery and deception to cause me to file a CA-1 form. Mr. Stuckey well knew that the CA-1 form was for traumatic injuries occurring during a particular shift or a given day. They, management employees caused me to believe the procedures they were using for expediting the claim were at all times procedurally correct.

Apr 13 00 01:54p

on Bailey

221 9600

p. 4

1(a). On December 13, 1999, I was informed by Phil Haven Hospital staff that Mr. Kent was faxed an Initial Medical Evaluation and Release Of Information from my therapist, dated October 21, 1999, and as well the medical records revealed Mr. Kent discussed with my therapist on October 21, 1999, the nature of my medical problem and treatment, which caused them to know that my illness was not traumatic as would necessitate or require the filing of a CA-1, Notice of Traumatic Injury. However, Mr. Stuckey, with the approval of Mr. Kent, used trickery and deceit to cause me to file a CA-1.

1(b) As to the Initial Medical Evaluation, dated October 21, 1999, which was faxed to Mr. Kent.

(b)(1) I was not provided nor informed by any agency employee, that this document had been received by them.

(b)(2) I learned from my therapist that this document had been faxed to Mr. Kent at the VA Human Resource Office, attention to Ms. McGuiggan on December 13, 1999.

(b)(3) Mr. Stuckey failed to provide this document to OWCP until December 29, 1999, with the filing of the CA-2 and attempted to make it appear to OWCP that this document was not obtained by him until December 28, 1999.

(b)(4) Neither Mr. Kent nor Mr. Stuckey forwarded this document to my immediate supervisor nor my product line.

1(c). I met with Mr. Kent on or about October 22, 1999 to present to Human Resources, medical documentation as to pending sick days and at that time we discussed the incidents involving the white employee. As such, both Mr. Kent and Mr. Stuckey well knew my work related injury did not mandate the filing of a CA-1. In fact, Mr. Kent stated at that time, I should have been able to handle the situation due to my program of recovery. (Twelve step recovery program).

1(d). To further deceive me into filing the incorrect form CA-1, on October 26, 1999, Mr. Stuckey indicated that the forms would be completed while in a computer. At this point, Mr. Stuckey deliberately failed to provide me with a two sided form CA-1 ( page 2 of the CA-1). Page 2, of the CA-1, contains the instructions for filing of the CA-1, which federal regulations require be given the employee.

1(e). Mr. Stuckey, by not providing me with the instructions, prevented me from taking the form directly to Rodney Kiscadden, my immediate supervisor, as per the instructions, which I would have done.

1(f) Mr. Stuckey, who is the agency's OWCP liaison, superseded the regulations, once he took on the role as my supervisor. Mr. Stuckey took on this role as my supervisor in order to assure that he be in the position to continue to circumvent the process.

G-0170

42

NPI 13 00 01.07P

DON BATES

11 221 0000

P. 5

1(g). On November 23, 1999, which was the day of my representatives' first visit to the Human Resource Office, we asked Mr. Stuckey to file a CA-2. Mr. Stuckey outright refused. Mr. Stuckey also stated there was a delay because, "Philadelphia controverted the claim." This was the very first time I was informed the claim had been controverted in any manner.

2. On or about November 30, 1999, my representative and I requested Mr. Stuckey to withdraw the CA-1 and to file instead a CA-2. Mr. Stuckey refused stating, "I thought it may be the wrong form but it will not be a problem at any rate." Mr. Stuckey also stated after reading the reports and allegations, he controverted the claim because he felt something was amiss. He went on to state at least he did not leave it sitting on his desk. I learned sometime later, that in the past at least one workers' compensation claim had been held up by not being processed.

3. On December 13, 1999 we reviewed the records and found a controversion letter written and signed by Mr. Stuckey. We also found the Release of Information.

4. Mr. Stuckey, selectively forwarded information to OWCP, which he felt was favorable to the agency, as evidenced by his letter and attachments to OWCP dated, December 3, 1999.

5. Though Mr. Stuckey alleges he was unable to obtain medical records from the treating medical facility, he had in his possession a signed Release of Information Form, dated October 21, 1999. Additionally evidence of his knowledge of this form and his need to use said form is evidenced in his letter as referenced in 4 above.

6. Mr. Stuckey did not inform me of the need for any additional medical documentation until questioned by my representative, on November 30, 1999, where Mr. Stuckey stated, "Lewis has failed to provide me with any additional medical reports." Mr. Stuckey also stated he had just sent a letter that morning asking me for additional medical documentation." Mr. Stuckey had an obligation, per the regulations to inform me of the need for additional medical documentation, within ten days of the filing of the claim.

7.. I was told, by Mr. Stuckey, on October 26, 1999 to enter a confidential password on his computer system and told as such no one would be able to access nor altered the forms. However, we found this to be untrue. On December 23, 1999, I received a message on my home answering machine from Mr. Stuckey, to come in to sign a CA-2. On arrival, a Mr. Tony Augustine, Personnel Management Specialist stated Mr. Stuckey had left the CA-2 to be signed with him. After perusing the documents I refused to sign it because it did not contain all the files, in particular Rodney Kiscadden's narrative. Several days later, December 28, 1999 we found two changes had been made to the CA-2 without my being present.

7(a) My signature was typed in and dated Dec. 20, 1999.

G-0171

7(b) My statement in item number 15 of the CA-2, (notice was given, however ca-1 was filed erroneously on 10-18-99 as claim no. 03-0246931.) had been moved to item

Apr 13 00 01:55p

Don Bailey

/ 221 3000

P. 6

number 16. As evidence of this, we refer to the word 'notice' of my statement as well as in the question as asked in item number 15. I feel this change was to accomplish two goals. First to avoid our explanation as to the erroneous filing of the CA-1 and as explanation for the omission of my narrative. ( I found on December 28, 1999. ( CA-2 form ) my narrative was missing from the records to be sent to OWCP and I insisted it be sent. This can be proven by Mr. Stuckey's first attempt to fax these records to OWCP ).

8. On November 30, 1999, Mr. Stuckey was again asked to withdraw the CA-1 claim and to submit a CA-2. Mr. Stuckey refused to file the CA-2 form, stating, " I discussed this with Philadelphia and was told it was the correct claim form."

9. On several occasions, my representative and I sent letters to Charlene Szabo, CEO, Lebanon VA and followed up with telephone calls, in an attempt to seek her assistance in this matter, prior to filing an EEO complaint. Ms. Szabo consistently failed to follow agency guidelines to address complaints of discrimination. Ultimately, Ms. Szabo, in a letter dated February 6, 2000 indicated there is an EEO procedure we could use. Said letter was received the day after the EEO complaint was made, February 15, 2000.

10. Mr. Stuckey, in violation of the regulations, assumed the position of my immediate supervisor, by providing a narrative of the facts in a letter dated November 1, 1999 and forwarded to Department of Labor. This letter was not based on facts or evidence and was intended to mislead OWCP.

11. Mr. Stuckey at all times prior to November 30, 1999, refused to provide me with a CA-7 form, indicating I had to wait until a decision was made in Philadelphia. Mr. Stuckey provided me with the CA-7 form on November 30, 1999, when requested by my representative.

12. During a meeting with Mr. Stuckey on or about December 20, 1999, my representative was forced to resort to subterfuge in order to obtain a CA-2 from Mr. Stuckey. After obtaining the CA-2, my representative and I began the claim process by taking the CA-2 to Rodney Kiscadden, my immediate supervisor to have it completed.

13. After Mr. Kiscadden completed the CA-2 and sent it to Mr. Stuckey, we reviewed it and found Mr. Kiscadden's narrative missing. ( Mr. Kiscadden had began writing his narrative while in the presence of Mr. Dumas and I ) After complaining to Raymer Kent about the missing narrative and the overall problems encountered in the claim process, Mr. Kent angrily shouted, " We have done all we are going to do for you people and we will do no more. " Due to the subject matter and manner this was said, it was obviously a derogatory statement based on our race, Black.

( Note: According to Mr. Dumas, I became visibly ill and left the office after hearing Mr. Kent's comment )

14. I learned on January 28, 2000 that Mr. Stuckey with the apparent approval of Mr. Kent, secreted parts of the police reports and failed to forward same to OWCP, with the original CA-1.

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for Bailey

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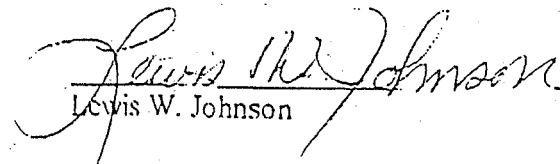
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15. On or about December 20, 1999, during a meeting with Mr. Stuckey and Mr. Kent, we, including Mr. Dumas discussed the issues involving my complaint of harassment, verbal harassment, stalking and assault against Eric Erickson. Mr. Kent stated apparently there was a misunderstanding and they did not realize that Erickson followed me around the VA after being told not to bother me. Mr. Kent also stated they would follow up with the Lebanon VA Police to correct their apparent mistakes. Several weeks later Mr. Kent informed Mr. Dumas that he had spoken to the VA Police Chief and that there would be no follow-up.

16. On February 8, 2000, in the presence of a Mr. Earl Williams, during conversations regarding medical documents, Mr. Stuckey stated to me, "I am your acting supervisor in these matters". A letter to Rodney Kiscadden, from me and Mr. Kiscadden's subsequent response indicate Mr. Stuckey is not my supervisor. Mr. Stuckey should not have assumed this role.

17. On or about March 3, 2000, during a meeting with Mr. Kiscadden, Mr. Kiscadden stated that when he attempted to do the workers' compensation claim form in my case, he was told that he was not involved in the process. Mr. Kiscadden stated that Mr. Stuckey showed him a document indicating that only the 'superior supervisor' would handle these matters, with Johnson. Further, Mr. Kiscadden apologized for Mr. Stuckey "screwing up" my claim.

18. On March 3, 2000, Mr. Dumas and I arrived unexpectedly at Mr. Stuckey's office and requested to review the OWCP file as pertaining to my claim for workers' compensation benefits, which were in Mr. Stuckey's possession. Mr. Stuckey removed several documents from the file prior to allowing me to review the file. At least one of the documents clearly had my name on it. When asked to see the documents or know their contents, Mr. Stuckey refused and placed them in a desk drawer.

  
Lewis W. Johnson

Dated: 4/12/00

G-0173

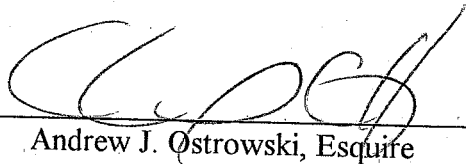
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**CERTIFICATE OF SERVICE**

I, Andrew J. Ostrowski, Esquire, hereby certify that I have served a true and correct copy of the foregoing document, by hand-delivery, addressed as follows:

Kate Mershimer, Esquire  
Office of the United States Attorney  
208 Walnut Street  
Harrisburg, PA 17108

By



Andrew J. Ostrowski, Esquire  
4311 North Sixth Street  
Harrisburg, PA 17110  
(717) 221-9500

Dated: July 29, 2002